

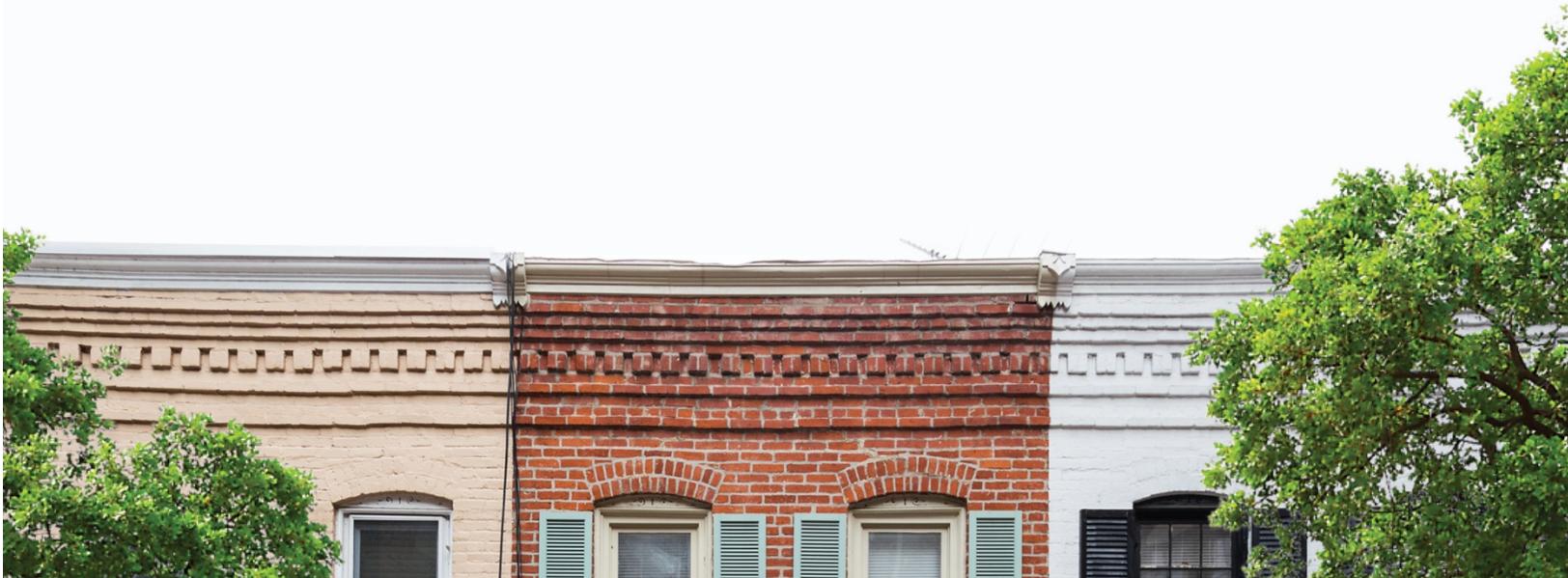
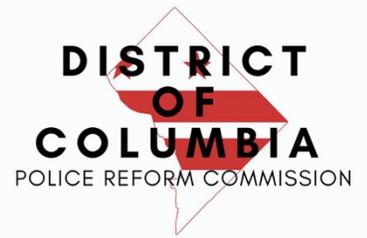
# DECENTERING POLICE TO IMPROVE PUBLIC SAFETY:

A REPORT OF THE DC POLICE REFORM  
COMMISSION

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DELIVERED TO THE COUNCIL OF  
THE DISTRICT OF COLUMBIA

April 1, 2021



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# Preface

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It has been our honor to serve as Co-Chairs of the DC Police Reform Commission.

The DC Council established the Commission to help the Council better understand how to improve or find alternatives to policing in the District. We knew when we joined the Commission that meeting the Council's call would require us to look far beyond policing for solutions. Our collective decades of experience working with city governments and advocating for change in policing taught us that cities – the District included – ask police to shoulder too much of the burden of meeting residents' public safety needs. At the same time, we have observed our collective tendency to ignore the direct connection between community health and healing, and community safety and crime reduction, when we set public policy and pass city budgets. We began our work on this Commission already understanding that the task of policing as currently defined – using the coercive power of the criminal legal system to solve a host of public safety challenges – is literally impossible.

Not only is policing inadequate on its own to keep people safe, it too often causes undue harm in the precise communities it is nominally meant to protect. Much of what has been normalized and accepted as necessary in policing does not answer genuine public safety needs but rather reflects the often-unthinking perpetuation of a system designed to control and exploit, rather than empower and nurture people – especially Black and Latinx people. Thus, we took seriously and were grateful for the Council's call to “re-envision” policing and to interpret that mandate broadly, as reflected by the recommendations in this report.

We also knew coming in that the problem of gun violence in the District is taking an intolerable toll, especially on those who should be the District's future: young Black and Brown residents. This toll has only become more tragic during this year of pandemic. In 2020, there were 198 people killed by homicide in the District. This is a 20 percent increase in just one year, and the highest total since 2004. The vast majority of these homicides were committed with guns, and they overwhelmingly impacted Black people in the District: 189 of 2020's homicide victims were Black, and 160 of those were Black and male, including several individuals under 18. There were 922 people shot in 2020, an increase of a third in just one year. At least eight people in DC were killed by their intimate partner in 2020.

Everything the Commission did, and every recommendation in this report, is animated by a determination to do better by our young people and their families, especially those east of the river, so that far fewer are killed or must live with the debilitating fear and trauma that accompanies a public safety crisis of gun violence. We believe that the members of the Metropolitan Police Department as a whole, and its new Chief Robert Contee, are genuinely committed to ending the scourge of gun violence. We are hopeful they recognize that what the police and the District are doing now is not working well enough, and too often causes unnecessary harm or is even counterproductive, and that they will be open to the evidence-informed recommendations in this report.

What we did not know when we agreed to co-chair the Commission was what an extraordinarily dedicated, knowledgeable, and hardworking group of commissioners we would have the privilege of working alongside. They were tireless and fearless in their efforts to secure better public safety, and better futures, for the residents of the District most often dismissed or discounted. The eighteen commissioners' collective breadth and depth of understanding of the needs and potential of District residents, their empathy, brilliance, creativity, and optimism

was not only energizing and inspiring, but has resulted in a set of recommendations that is stronger and more exhaustive than anything we could have hoped for at the outset.

The Commission could not have completed its work without the scores of individuals who provided crucial information, insights, and data. We hope you see your own ideas and concerns in our recommendations. We heard from DC residents, including students and dedicated community advocates, activists and government officials. We heard both from line officers and the head of MPD's police union, as well as from individuals who have been the subject of police abuse or had family members killed by police. We heard from scholars who have researched and written about the criminal legal system, effective violence reduction, and other topics pertinent to the Commission's work. We heard from practitioners in DC and beyond, including police chiefs, prosecutors, and public defenders. MPD officials were present at nearly every committee meeting and often participated. Each of these individuals is acknowledged in the attached report.

We also are indebted to Impact Justice, which staffed the Commission, and especially the nothing-short-of-amazing I/J Project Director, Bethany Young, as well as the indefatigable Legislative Policy Advisor Blaine Stum. We are of course grateful to the entire DC Council and to DC Council Chairman Phil Mendelson for establishing and supporting the work of the Commission.

Robert C. Bobb & Christy E. Lopez

April 1, 2021

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# Introduction

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The summer of 2020 changed the nation and the District of Columbia. In overwhelming numbers, people took to the streets to affirm the value of Black lives and protest police killings of George Floyd, Breonna Taylor, and so many others. In the context of a pandemic also disproportionately killing Black and Brown Americans, the weight of history and an unbearable present converged.

In Washington, D.C. there were near-continual protests and a City Council hearing on the Metropolitan Police Department that elicited roughly 16,000 witness statements.<sup>2</sup> In July, the Council passed the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020.<sup>3</sup> In addition to placing temporary limits on MPD, the legislation established the DC Police Reform Commission, tasking it to “examine policing practices in the District and provide evidence-based recommendations for reforming and revisioning policing in the District.”

Long before the creation of the Metropolitan Police Department, a handful of constables patrolled the District’s streets. Among their explicit duties was the pursuit of “fugitive servants,” slaves who did not have permission from their owners to leave the plantation.

## HISTORY OF POLICING IN WASHINGTON, D.C.

Long before the creation of the Metropolitan Police Department, a handful of constables patrolled the District’s streets. Among their explicit duties was the pursuit of “fugitive servants”—slaves who did not have permission from their owners to leave the plantation.<sup>4</sup> Each month, these constables were required to check areas where slaves would congregate. If they found people hiding or running from their owner, the law instructed constables to whip them.<sup>5</sup>

As the population of “free” Black residents increased, lawmakers enacted “Black codes” in an effort to control the Black population by criminalizing an array of normal activities, from being outside past 10:00 p.m. to dancing without a license.<sup>6</sup> The constables enforced these laws vigorously by arresting or fining people.<sup>7</sup> When Congress created an auxiliary night watch,<sup>8</sup> these officers also disproportionately targeted the District’s Black population.<sup>9</sup> These mechanisms designed to uphold slavery and institutionalize anti-Black racism were the foundation for the newly created Metropolitan Police Department in 1861.

In the department’s initial years, a five-member Board of Metropolitan Police Commissioners, appointed by the President, functioned as the primary oversight body. The Board set up station houses, adopted minimum standards for becoming a police officer, and allocated police resources across the District.<sup>10</sup> While policing became more

organized, racial bias rooted in laws linking criminality and Blackness persisted. Over the course of the year 1870, for example, officers arrested roughly one out of every 10 Black residents, mostly for “vagrancy” and “disorderly conduct.”<sup>11</sup>

In reforms throughout the late 19th and early-to-mid 20th century...the focus was on fashioning MPD into a “model police force” in the eyes of White residents to justify expanding its resources and authority.

Reforms throughout the late 19<sup>th</sup> and early-to-mid 20<sup>th</sup> century did nothing to change these dynamics. The focus was on fashioning MPD into a “model police force” in the eyes of White residents to justify expanding its resources and authority.<sup>12</sup> The creation of the Traffic Bureau is an apt example. A media report issued not long after the bureau’s creation gushed that its “highly trained” officers were “experienced, efficient and courteous.”<sup>13</sup> This led to more resources for the bureau, and, in less than a decade, to all officers being trained in traffic control.<sup>14</sup> While MPD was heralded for its professionalism, the reforms also meant that police had more resources to stop, cite, or arrest people; and this power was, as throughout history, exerted disproportionately to control, punish, and investigate Black residents. In a handful of years, police reported over 13,000 misdemeanor traffic violations against Black residents, more than any other misdemeanor offense.<sup>15</sup>

When Black residents sought accountability for the harassment and abuse they experienced at the hands of police, they were met with denials, justifications, and desultory investigations.<sup>16</sup> For years, the only avenue for accountability was the Police Trial Board, a quasi-judicial body made up of personnel from the Metropolitan Police Department.<sup>17</sup> Recognizing the bias baked into the Trial Board, community groups and advocates spent years agitating for a civilian complaint review board. The first came in 1952 but was quickly abandoned.<sup>18</sup> A subsequent iteration in the late 1960s also failed to achieve its mission.<sup>19</sup> Calls to bolster the board or create a new, better system of civilian oversight were drowned out by a chorus of policymakers arguing that police needed more resources, authority, and harsher tactics to deal with a “plague of lawlessness” that “struck our Nation’s Capital.”<sup>20</sup> In 1956, the District’s federal overseers, the three-person board of commissioners appointed by the United States Congress, imposed a law on the District that required a minimum number of Metropolitan Police Department officers—2,500 officers.<sup>21</sup> This law was modified by Congress in 1961 to increase that minimum to 3,000 MPD officers,<sup>22</sup> and remains on the books to this day, even as the population of the District has decreased.

By 1971, when President Nixon launched the War on Drugs,<sup>23</sup> D.C. was in the throes of a heroin epidemic that disproportionately impacted Black communities.<sup>24</sup> While the initial response was grounded in public health, this quickly gave way to calls for more punitive measures.<sup>25</sup> Congress quickly expanded MPD’s resources by giving the department more personnel and a new computer system to better track crime and distribute personnel.<sup>26</sup> New laws also granted police and prosecutors greater authority and discretion, including the ability to enter a residence without knocking and to charge youth who committed certain crimes as adults.<sup>27</sup> Once again, this punitive response was meted out disproportionately on the District’s Black residents.<sup>28</sup>

Although concerns around the expanded reach of police revived the push for civilian oversight, the new civilian complaint review board created in 1980 quickly floundered due to a lack of resources and hostility from the police union.<sup>29</sup> According to one report, the board had nearly 1,500 unresolved complaints within five years.<sup>30</sup> The board was dissolved in 1995, leaving residents with no avenue to have their complaints heard.<sup>31</sup>

At the same time, in 1994, a series of reports in the Washington Post highlighted widespread dysfunction<sup>32</sup> and corruption<sup>33</sup> within MPD, in part a result of the department's rapid expansion to hire more officers despite the lack of any evidence that this increase in officers would improve public safety. It took a second Washington Post investigation four years later to spark change. That five-article series in November 1998 on use of force by MPD officers was shocking: Officers had shot and killed more people in the previous five years than many other larger police departments, including Chicago and Los Angeles.<sup>34</sup> Officers fired their weapons once every two and a half days,<sup>35</sup> and internal investigations of police shootings were riddled with errors and bias.<sup>36</sup>

[E]fforts to reform police have often reinforced or expanded law enforcement's role in systemic racism or eluded the problem altogether by examining policing out of context...

As a result, Mayor Anthony Williams and Chief of Police Charles Ramsey invited the Department of Justice to investigate MPD's use, reporting, and investigation of force, a process that led to a slate of reforms and years of independent monitoring.<sup>37</sup> By June 2008, MPD was found to be in "substantial compliance" with a majority of the required reforms;<sup>38</sup> and a follow-up report in 2016 by the District of Columbia's Office of the Auditor described MPD as "plainly a very different, and much better, law enforcement agency than when DOJ began its investigation in 1999."<sup>39</sup> Unfortunately, a report issued on March 23, 2021 by the auditor found significant backsliding within MPD and, worse, an unwillingness or inability to change on its own. The auditor wrote: "Unfortunately, the weaknesses identified in our 2016 report have not been remedied; indeed, they have grown substantially worse. Our review of the four 2018–2019 fatal use of force cases has shown that those weaknesses persist, and that generally MPD has not recognized them and appears to resist or be unconcerned with remedying them."<sup>40</sup>

From the outset, we were animated by two fundamental questions: What really makes us safe? And what limited role should police play in the broad social project of nurturing safe and healthy communities?

## **THIS COMMISSION**

As this brief history illustrates, efforts to reform police have often reinforced or expanded law enforcement's role in systemic racism or eluded the problem altogether by examining policing out of context; and also have failed to provide communities what they need to truly be safe and to thrive. This Commission, born out of protest against this long-standing dual failure, was determined to avoid perpetuating that legacy. Indeed, from the outset, we were animated by two fundamental questions: What really makes us safe? And what limited role should police play in the broad social project of nurturing safe and healthy communities?

While we surveyed the national landscape, our primary focus was local, learning as much as we could in just a few months about public safety in the District of Columbia: what is working and should be expanded, where there are gaps in services, and what policies and practices undertaken in the name of safety appear ineffective or even harmful.

We were well equipped to conduct such an inquiry. The Commission's 20 members represent a wide array of professional backgrounds and lived experiences. They include activists, advocates, and leaders of community-based organizations that provide essential services and support to District residents. There are educators, attorneys, and faith leaders, as well as current and former District officials. The Commission includes a retired MPD officer, a current member of the Police Complaints Board, and others with deep expertise in law enforcement and the limits of reform to date. City Council Chairman Phil Mendelson should be commended for forming such a diverse body, in which the vast majority of Commissioners are residents of color.

To move quickly while covering a range of topics and issues, the Commission established five substantive committees:

1. Committee on Policing Youth and Police in Schools
2. Committee on Assessing and Expanding Violence Reduction Efforts
3. Committee on Building Up Non-Police Community Health and Safety Interventions
4. Committee on Reforms to MPD Practices
5. Committee on MPD Accountability and Oversight

Each Commissioner served on two committees of their choosing. Beginning in September 2020, each committee typically met weekly, while the full Commission met monthly. Meetings were open to the public and held via videoconference because of the COVID-19 pandemic.

Beginning in November 2020, the Commission made repeated requests to MPD for approximately 70 key pieces of data and information...MPD fulfilled only a small fraction of those requests... It suggests that MPD is not monitoring itself as it should... and does not have a culture of transparency.

With considerable support from Council and Impact Justice staff and consultants, Commissioners considered relevant research, emerging national trends, policies and practices in other jurisdictions that might work in D.C., and reports by recent commissions and task forces with mandates similar to our own. While we surveyed the national landscape, our primary focus was local, learning as much as we could in just a few months about public safety in the District of Columbia: what is working and should be expanded, where there are gaps in services, and what policies and practices undertaken in the name of safety appear ineffective or even harmful.

To answer these and other questions, this diverse body of Commissioners sought information and perspectives from an equally diverse array of local experts, including people whose keen insights stem from their own lived

experience. They range from individuals on the frontlines of violence interruption, to the Chief of Police, the deputy mayor for public safety, and other senior District officials; from public school teachers and students to community-based mental healthcare providers; from police union representatives to members of the Defund MPD Coalition, among many others. The Commission also held two open community forums where anyone could share their experiences and concerns. In total, the Commission consulted with or heard from more than 100 individuals. We sought to acknowledge each of these individuals in our report.

Beginning in November 2020, the Commission made repeated requests to MPD for approximately 70 key pieces of data and information, including the composition and performance of MPD's Crime Suppression Teams and Narcotics & Special Investigations Division (NSID); data on search warrants executed by MPD officers; descriptive information about stops conducted by MPD officers; reports for a random sample of pre-arrest "probable cause" searches; recent use of force data; information about pre-service and in-service training; school campus arrest data, and more.<sup>41</sup>

[W]e propose...a significant shift in the District's approach to public safety. ... a clean break with the District's and the nation's legacy of over-policing yet under protecting people of color and the beginning of a new era of greater health, safety, justice, and equality in DC.

In a telling aspect of our inquiry, MPD fulfilled only a small fraction of those requests, and for many of the requests did not respond until March 7, 2021, just three weeks before the release of our recommendations and report. While lack of data hampered our own inquiry to some extent, far more concerning is the department's inability and/or unwillingness to extract and share information about what it does, how and why it does it, and what the results of those choices are. This suggests that MPD is not monitoring itself as it should in order to responsibly guide the Department and supervise individual officers, and does not have a culture of transparency, even though transparency is a core aspect of policing in a democratic society. Indeed, in mid-February 2021, the ACLU of D.C., Black Lives Matter D.C., and Stop Police Terror Project D.C. once again had to sue MPD and the Mayor before the Department released stop data as required by the NEAR Act.<sup>42</sup>

The culmination of the Commission's work is the report you are reading, in which we propose and provide a road map for a significant shift in the District's approach to public safety. That shift is grounded in specific, actionable recommendations that, while not exhaustive, would lead to far greater investment in services and supports to address the root causes of crime and disorder, both individual and systemic; and to a smaller, more appropriate and constructive role for police. It would be a clean break with the District's and the nation's legacy of over-policing yet under-protecting people of color, and the beginning of a new era of greater health, safety, justice, and equality in D.C.

# Guiding Principles

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Public safety is far more than just the absence of crime. People are truly safe only when we have the space and opportunities to thrive -- when our needs for clean air, water, food, and shelter are met; when we have the autonomy and self-determination to express our views, go where we will, and take control of our own futures; when we can trust the entities explicitly tasked with preventing and responding to crime; and when none of us face structural inequities that keep us from living free and healthy lives.

Racism and other systems of oppression and structural inequality undermine health and safety because they rob individuals, families, and entire communities of the resources and opportunities they need to thrive. This is the current reality in the United States, including in the District.

Community members are rich in knowledge, ideas, experiences, and energy, and they should set the standard for public safety and lead the way in innovation. Their perspectives and experiences should be at the center of measuring the effectiveness of any effort to improve safety. In particular, we must prioritize and honor the voices of the people most impacted by our failures to provide public safety to this point.

Public safety is a responsibility shared by all community members and many facets of government. We should not depend solely or even primarily on police to achieve it. Police should serve as one force among many who provide and maintain public safety.

Police must not exercise their power in ways that exacerbate existing racial inequalities, that cause undue harm to the communities they are charged with serving, or that shield their activities from the public. Historically and presently, the institution of policing has served as a tool of systemic racism and has done considerable damage to Black and Brown communities with impunity. Moving forward, police must be accountable first and foremost to the communities they serve and must routinely demonstrate their responsiveness and effectiveness through data, analysis, and evaluation. No policy or practice should be hidden or assumed to be fair and effective.

As a District, we have to be willing to shift course, realign resources, and try new approaches and interventions to achieve the safety, broadly defined, that all residents want and deserve. There is no quick fix, but there is a better way forward.

# Summary of Recommendations

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This section provides an overview of the Commission’s recommendations. It briefly describes key shifts that are essential to improving public safety in the District and ending harms associated with over-reliance on law enforcement. It also highlights anchor recommendations: changes in perspective, policy, practice, and resources that are necessary to begin to realize the broader shifts.

Use this summary as a guide, not as a replacement for the Commission’s 90 highly detailed recommendations, many of which have multiple sub-parts. The report as a whole includes crucial information that is only minimally captured in this brief summary. The Commission was rigorous in its effort to craft recommendations that draw from a broad range of experiences and expertise but are tailored to current circumstances in the District. Our recommendations are often highly specific, and if implemented holistically would lead to meaningful change. We also were rigorous in explaining the rationale for our recommendations. The statements that open each section of the report, and the discussions that follow clusters of related recommendations, address why particular changes are needed and what they aim to accomplish. These narratives point to research, data, best practices and emerging trends, and other factors that support the recommendations; and, in some cases, raise considerations that are important to successful implementation.

Reflecting the Commission’s commitment to taking a more complete view of public safety and the social supports necessary to achieve it, our slate of recommendations covers a wide range of issues. This report is the product of 20 independent minds that worked collectively for roughly seven months and, as a whole, reflects the views of the overwhelming majority of Commissioners.

## **Meeting Crisis with Specialized Skill and Compassion**

Law enforcement should be one option in an array of emergency responders, not necessarily the first option. Individuals in crisis need specialized intervention and sometimes skillful de-escalation, not forced compliance or arrest. As the public is well aware, involvement of an armed officer can make a difficult situation much worse, and potentially deadly.

The District should make behavioral healthcare professionals and other specialists the default first responders to individuals in crises. This is the emerging trend nationally, and the District could be a leader by taking this approach to scale in a large city. This will require investments to build a corps of specialized first responders that can act quickly, reliably, and effectively. In addition to behavioral healthcare professionals, this corps should include domestic violence advocates and those equipped to provide emergency support and shelter to survivors of sex trafficking. Because anyone may encounter a person in crisis, the Council should fund in-depth crisis intervention

trainings open to the public and mandatory for every MPD officer. Once a diverse corps of first responders is able to be deployed districtwide, they should have responsibility for conducting wellness checks.

In situations where a person in crisis has a weapon or for some other reason poses a significant danger to others, a co-response is needed. The Council should require and fund the creation of teams staffed by experienced behavioral healthcare professionals who co-train with specially selected MPD officers. Similarly, the Council should fund the Office of Victim Services and Justice Grants to expand the number of domestic violence advocates able to respond *along with* officers, if not *in lieu of* police as suggested above; and legally redefine domestic violence as occurring within the scope of an intimate partner relationship to ensure limited resources are used where they are needed most.

Behavioral healthcare professionals and other specialists should be the default first responders to individuals in crises. This is the emerging trend nationally, and DC could be a leader by taking this approach to scale in a large city.

This sea change in how the District responds to individuals in crisis should be accompanied by a reduction in the use of arrest in those situations where police are involved. Arrest rarely solves the underlying problem and can trigger a range of negative consequences. Reforms should include expanding pre-arrest diversion for individuals with a behavioral health problem, eventually replacing the District's domestic violence mandatory arrest law with clear guidance that officers follow in consultation with advocates on the scene and survivors themselves; as well as policies that discourage criminalizing survivors of sex trafficking.

These reforms and others the Commission calls for in Section I of this report require changes to the infrastructure, technology, staffing, and dispatch protocols of the Office of Unified Communications which operates 911, in conjunction with a public information campaign to build confidence in a new emergency response network among DC residents who are reluctant to make a call for help that might spark an unhelpful (or worse) response from police.

### **Strengthening the Safety Net for Vulnerable Residents and Decriminalizing Poverty**

While the previous section focuses on the need to provide a broader public safety response to individuals in crisis, it is of course preferable to prevent a crisis from occurring at all. Yet, for far too many DC residents, life is lived from one crisis to the next. The District needs to expand and create community-based services and other resources that meet people's underlying needs and thus improve the quality of life for District residents and prevent many emergencies from arising in the first place.

One essential thread of a strong social safety net is culturally competent and easily accessible behavioral healthcare, including for substance use disorders. During the Commission's inquiry, it became increasingly clear that the Department of Behavioral Health (DBH), does not have the funding and other resources to meet the current and anticipated needs of all District residents. This must change.

The District needs far greater investment in behavioral health and wellness services that are based in communities and culturally competent. Research shows that when mental health professionals understand the role of cultural differences and community circumstances, and act on that knowledge, people fare better. Expansion of community-

based mental health care must occur in collaboration with communities and intentional efforts to ensure that all residents know about the services available to them. The District must also establish processes to improve the coordination of care across agencies and initiatives.

The Commission realizes that the significant expansion of services we recommend will be iterative. With that in mind, we call on the Council to establish a task force or coalition of community-based providers and public officials to assess the adequacy of preventative community behavioral health and wellness programs on an annual basis.

Lack of safe, stable, and affordable housing is also a serious problem for vulnerable residents, from the chronically homeless, to youth leaving foster care, to individuals seeking safety from family violence. The Council must prioritize addressing DC's housing crisis by expanding emergency shelter and supportive services and, most important, by investing in pathways to permanent housing. As part of that process, the Department of Housing and Community Development (DHCD) must enforce equitable development policies and seek input from low-income residents and people of color to ensure that wealthy developers do not control the decision-making process.

The District needs to expand and create community-based services and other resources that meet people's underlying needs...

Many of the people falling through a weak social safety net are also subject to over-policing and criminalization. Efforts to better support residents must be accompanied by a far less punitive approach to low-level offenses that are driven primarily by structural racism, intergenerational poverty, and a deficit of resources. This Commission joins with others in calling on the Council to decriminalize low-level offenses, including but not limited to illegal vending and panhandling.

Formal systems and services are not the answer to every problem. The Council should invest in restorative justice and other processes that leverage the potential of community members to support one another. Restorative justice approaches have been found to be effective at building community, strengthening relationships, and fostering healing. While there are a number of community-based organizations led by Black, Indigenous, and other people of color (BIPOC) already engaged in restorative justice, their work is occurring on a small scale. The Council should create funding opportunities that enable these and other BIPOC-led community-based organizations to expand services and secure designated spaces.

#### **Back to Normal: Re-establishing Police-Free Schools**

Since 2005, when the Council approved legislation inviting police into public schools, MPD officers have taken the lead in school public safety. The daily presence of police officers in schools is antithetical to environments meant to foster learning and positive development. Youth of color in particular often do not feel comfortable, valued, or safe in educational spaces where they are interacting with representatives of a system that generally views Black and Brown people as a threat. Indeed, a panel of youth told this Commission that instead of fostering safety in school, officers often escalate altercations, create a hostile atmosphere, and cause anxiety among young people by their mere presence, especially since they carry guns.

While the daily presence of police in schools has been the experience of a whole generation of youth in D.C., the District has a much longer history of operating schools where police are rarely on campus. That is the normal, healthy reality to which the District should return. The District should replace police, who, by design, are trained primarily in coercion and crime control, with professionals who are skilled and trained in helping young people navigate the opportunities and challenges of life in the classroom, schoolyard, and beyond. That takes money. By the end of FY21, the Council should eliminate the Metropolitan Police Department School Safety Division and create a community-led process to re-allocate those resources (roughly \$14 million); and make additional investments supporting positive youth development and promoting safe and healthy learning environments.

In particular, the District must increase investments in community-competent, trauma-informed school-based mental health professionals. The Commission's own analysis shows that many D.C. schools fall far short of national standards regarding student-to-staff ratios. In a sample of 114 schools, less than a third (29%) met the staffing standard for school counselors; 38% met the staffing standard for school social workers; and 62% met the staffing standard for school psychologists—professionals who are critical to student well-being. While DC public schools have, on average, one security guard for every 165 students, they have only one social worker for every 254 students, one counselor for every 352 students, and one psychologist for every 529 students.

Increased funding would support an array of other valuable services and resources, including Positive Behavioral Intervention and Supports (PBIS) programs, violence interrupters, and restorative justice, more art classes, and extracurricular activities that open doors and minds. Resources should be distributed based on a school's needs and the needs of its surrounding neighborhoods.

In police-free schools, security staff should be unarmed District of Columbia Public Schools employees chosen by and directly accountable to local school leadership, and well trained in how to handle mental health emergencies and use culturally relevant verbal de-escalation techniques; and in general be fully integrated into the life of the school.

By the end of FY21, the Council should eliminate the Metropolitan Police Department School Safety Division and create a community-led process to re-allocate those resources (roughly \$14 million)... In particular, the District must increase investments in community-competent, trauma-informed school-based mental health professionals.

To be in sync with this shift in the approach to school safety, the District must minimize arrests of children at school. Specifically, the Council should prohibit MPD and other law enforcement agencies from serving warrants, detaining, or arresting youth on campus or at school-related events, *except* for violent incidents that occur in school and involve the use of a dangerous weapon as defined by the District of Columbia Public Schools. The Council should enact similar safeguards that extend to school personnel to protect students and their family members from District and federal immigration enforcement agencies. And schools should be weapon-free zones. Law enforcement officers should be required to disarm before entering a school, unless responding to a violent incident.

## Trusting and Investing in Communities to Stem Gun Violence

Roughly four years ago, with passage of the Neighborhood Engagement Achieves Results (NEAR) Act, the Council signaled the importance of relying more on community-based solutions to violence. Today the District has a permanent agency to support community-based solutions to violence: the Office of Neighborhood Safety and Engagement (ONSE). But the roughly \$10 million allocated to ONSE in FY21 is a tiny fraction of the more than \$500 million allocated to MPD. And ONSE lacks the authority to coordinate and support violence reduction efforts districtwide.

The Commission is heartened by the newly created gun violence prevention coordinator and emergency operations center, and by the new Building Blocks initiative, which suggests the Mayor's administration understands gun violence as a public health crisis fueled by deep and long-standing structural inequities. While there is great potential in these nascent efforts, how they are carried out is of considerable concern to this Commission. These new government entities must facilitate, not impede, deep reform of MPD and the District's public safety infrastructure.

In communities with elevated rates of violence, the risks also include violence by police—actual uses of force and the ever-present threat that many Black and Latinx residents feel. Even as gun violence is increasingly understood as a public health problem, it continues to drive and erroneously justify aggressive and ineffective policing strategies and tactics. Community-based interventions, not police, should be at the center of efforts to stem violence, including gun violence.

[T]he District must strategically scale up community-based violence interruption initiatives as a crucial first line of intervention. ...[and] invest more in job training and other programs and services that support healing and constructive life change...

Beginning immediately and with strong leadership from the Council, the District must strategically scale up community-based violence interruption initiatives as a crucial first line of intervention. This work must include creation of a hospital-based violence interruption program in the new level-3 trauma center serving Wards 7 and 8. This public health-centered approach to stemming violence is poised to become the dominant paradigm nationwide, especially as a growing body of evidence demonstrates the potential for significant gains in safety. Growth must occur in tandem with streamlining and better coordinating separate initiatives, and better equipping, supporting, and compensating frontline staff, treating them on par with other public-facing essential workers.

Violence interruption is just one piece of the solution and only truly effective when it's a gateway, not an end point. The Council must invest more in job training and other programs and services that support healing and constructive life change for residents of historically marginalized communities. These programs should be evidence-based, while also leveraging local knowledge and potential for innovation; they must be trauma-informed and trauma-responsive and seamlessly connected as a network of community-based solutions to violence.

Neither officials nor the public should expect miracles immediately; programs like this take time to mature and pay off. At the same time, there must be a concerted effort to measure impact—in numbers and in other ways and incorporating participant perspectives—and then refine interventions as necessary. In the same vein, the Commission calls on the Council and Mayor to lead the District in partnering with a local university to establish a

state-of-the-art research center to advance public health-centered, trauma-informed solutions to gun violence. For more than 25 years, federal funding for gun violence research has been hampered by a law that prevented the CDC from undertaking any research that could be used to promote gun control. Although its grip was finally broken, federal funding for research on gun-related deaths and injuries is still a small fraction of what is needed to understand and solve a problem that affects over 115,000 people in America every year, including more than 500 people in DC. The District should be a leader nationally in building a compelling base of knowledge that can save lives.

### **Embracing a Harm Reduction Approach to Policing**

One of the challenges facing police agencies nationwide, MPD included, is to minimize the potential for their own officers to inflict harm. Because every stop, search, arrest, and use of force is inherently repressive and distressing to some degree, each one should have verifiable benefits that outweigh the anguish it causes to those directly affected. This is what it means to take a harm reduction approach to policing. MPD and its officers should be animated not by what they *can* do as a matter of law, but by what they *should* do based on what reliable evidence establishes as *effective* at addressing serious crime and as *minimally intrusive* as possible.

A harm reduction approach requires officers to be fair and impartial in exercising their enforcement authority. Police agencies have a long history of discriminating against and traumatizing people of color, in particular Black men and boys, and increasingly Black women and girls, as well as LGBTQ+ individuals. MPD is no exception. Although the Department has made progress toward eradicating deleterious, discriminatory policing practices over the past two decades, its work in this regard is far from complete. Even where individual officers strive to be impartial, the structural racism that infects all of American life continues to be particularly pernicious in policing, largely negating the efforts of individual officers. Statistical and experiential evidence of MPD's stop and search practices, presented in detail in our report, exposes the still difficult road ahead.

A harm reduction approach also obligates MPD to be transparent about what it is doing and why. This means the Department must create a culture of transparency in which the collection, maintenance, analysis, and publication of information about officers' encounters with people who live in and visit the District is valued and supported, rather than distrusted and resisted. MPD needs this data on stops, searches, arrests, and uses of force to understand the impact of its own practices and ensure that they meaningfully address crime and genuinely reduce harm. District residents have a right to make their own determinations about MPD's performance based on the same data, as well as a right to hold MPD accountable when its officers unjustifiably inflict harm.

MPD's Crime Suppression Teams and Gun Recovery Unit, specialized units that use aggressive stop and search tactics, should be immediately suspended... The Council should correspondingly...ban "jump-outs."

[Council] should prohibit consent searches, given that voluntary consent is an oxymoron...especially in over-policed communities...establish a presumption of citation in lieu of arrest for low-level offenses...ban no-knock warrants and strictly limit quick-knock raids.

Certain law enforcement practices will move MPD closer to the harm reduction objectives identified above, while other practices will make achieving those objectives either impossible or exceptionally difficult. The Commission calls on the Council and MPD to undertake the following anchor reforms without delay:

#### *Curtail Aggressive, Ineffectual, and Harmful Stop and Search Practices*

MPD's Crime Suppression Teams and Gun Recovery Unit, specialized units that use aggressive stop and search tactics, should be immediately suspended unless and until the Department produces data showing they address violent and otherwise serious crime more effectively than ordinary patrol units. To address gun violence in a potentially more effective and less harmful way, MPD should explore greater use of person-based focused deterrence.

The Council should correspondingly pass legislation curtailing several invasive, ineffectual enforcement tactics. It should ban "jump-outs," which Crime Suppression Teams and the Gun Recovery Unit are known for. It should prohibit consent searches, given that voluntary consent is an oxymoron in the policing context and that residents, especially in over-policed communities, rarely feel sufficiently free and safe to voluntarily consent. And it should allow "pretext" stops—stops for minor offenses when the actual purpose is to conduct a fishing expedition on a more serious offense—only with supervisory approval and only to investigate violent crimes.

Finally, the Council should transfer authority to enforce traffic violations that do not imminently threaten public safety from MPD to the Department of Transportation.

#### *Limit Arrests that Do More Harm Than Good*

The District has come to over-rely on arrests and to underestimate the often life-changing harm they produce. The Council should amend the DC Code to establish a presumption of citation in lieu of arrest for low-level offenses. At the same time, MPD should establish and enforce a "most effective, least intrusive response" policy that mandates compliance with the new law, defines and requires a problem-solving approach to criminal activity, and affirmatively promotes alternatives to arrest.

#### *Adopt Safer, More Respectful Search Warrant Practices*

The Council should modify search warrant execution practices by banning no-knock warrants and strictly limiting quick-knock raids. The Council should also require officers who seek and execute warrants to exercise diligence in confirming addresses and to comply with constitutional requirements for patting down and searching occupants. Additionally, the Council should authorize prompt compensation for any damage done to property during warrant executions.

#### *Reinforce the Imperative of De-escalation*

MPD officers must actively seek to de-escalate encounters that present a threat of violence, and when left with no option other than to use force, must use only the force that is necessary, reasonable, and proportional to the threat posed. Routinely meeting this standard requires enhanced training for all officers.

### *Apply a Harm Reduction Approach to Special Police Officers*

Require more extensive training for the District's thousands of special police officers and disarm non-sworn special police officers in public housing.

### *Improve Transparency and Accountability Through Data Collection, Analysis, and Publication*

MPD should significantly enhance its data collection and analysis practices. The Commission has identified a number of areas in which MPD must not only collect and maintain data, but analyze and utilize it to assess, inform, and refine departmental policy, training, supervision, and discipline. These areas include but are not limited to stops, protective pat-downs, searches, search warrants, arrests, uses of force, and canine use. All data in these areas should also be easily accessible to the public. The Department's legitimacy in the eyes of District residents depends on it.

In this vein, it is important to note that despite repeatedly asking MPD for data and other information about various practices, the Commission received only some of what we requested. Depending on the request, MPD claimed that it either lacked the capacity to respond or did not maintain the information requested. This hampered the Commission's inquiry to some extent, as we had neither the authority (e.g., no subpoena power) nor the resources to conduct a full inquiry into MPD practices. But it also raises larger concerns. MPD's inadequate response to our information requests suggests it does not engage in the type of rigorous self-evaluation required to properly supervise officers, correct departmental deficiencies, and improve departmental performance. It also suggests that MPD does not have a culture of valuing transparency, even though transparency is a core aspect of policing in a democratic society.

### **Developmentally Appropriate: Taking Special Measures to Protect Young People from Over-Policing and Criminalization**

Even as MPD creates more youth-focused programs like the Officer Friendly program and the Youth Advisory Council, individual officers continue to over-police youth of color, often for normal adolescent behavior, mirroring national trends. In *Reforming Juvenile Justice*, the National Research Council of the National Academies, points to a sizable body of literature showing that youth of color are more likely than White youth to be stopped, arrested, and later adjudicated in court.

While Black boys are policed to a greater extent than any other demographic, the criminalization and biased treatment of young people of color extends to Black girls as well. According to a 2018 report by Rights4Girls and the Georgetown Juvenile Justice Initiative, Black girls in DC are 30 times more likely to be arrested than White boys and girls combined.

Black, Brown, Indigenous, and other youth of color understand their relationship with law enforcement in the context of a long history of over-policing and criminalization of their families and communities. At an early age, they learn the system is stacked against them; they learn to fear and avoid police, and to always comply when confronted by an officer. The weight of all this, coupled with their still-developing brains, means that youth of color often end up sacrificing their legal rights, with potentially serious repercussions for their futures. The District should take steps to limit punitive encounters between police and youth, and when such encounters cannot be avoided, ensure that they are developmentally appropriate.

To help limit punitive encounters, MPD should institute policies, coupled with training for officers and

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corresponding incentives, to increase the use of pre-arrest diversion and connect youth with community-based programs and other resources. The Council should play a role in this broad shift by decriminalizing status offenses, as well as some other offenses when committed by youth; and also by establishing 12 as the minimum age of liability for juvenile delinquency proceedings—a cut-off consistent with international law and recent state reforms.

The data are abundant: the adolescent brain is still developing, and the cognition and emotional reasoning of a child under 12 are far from that of an adult. In fact, neurological research shows a person’s brain continues to mature throughout adolescence and into their mid-20s. As a result, young people are more likely to be swayed by peers, engage in risky and impulsive behaviors, and experience drastic mood swings—all the more reason for the legal system to treat them differently.

To protect young people in circumstances when arrest cannot be avoided, the District needs to take a developmentally appropriate approach to informing youth of their right to remain silent and other fundamental rights. *Miranda* rights should be conveyed in wording that young people can understand and in the presence of legal counsel, with whom a young person can consult before waiving their rights. Council should work with DC’s Public Defender Service and MPD to ensure that legal counsel is available in police stations. The stakes are high: Most youth do not understand their rights and are not mentally or emotionally equipped to weigh short-term gains against longer term rewards. In fact, young people disproportionately make false confessions that can lead to wrongful convictions. Because of bias in the criminal legal system and racism in society at large, Black youth in particular may lack confidence that their claims of innocence will be believed.

Success of these reforms depends on buy-in from MPD officers and their supervisors. Because people won’t adopt what they don’t understand, MPD must provide more training for all officers in adolescent development and adolescent-appropriate policing, from brain science and the dynamics of trauma to de-escalation. For all the changes the Commission recommends in order to deliver the widest possible benefit, and to help end the unnecessary criminalization of individuals who are still growing and maturing, the Council must expand the legal definition of a child to include all persons under the age of 21 (albeit with important caveats described in Section VI). Finally, young people deserve to have a more substantive role in policymaking and in the oversight of public agencies that directly impact their lives—and that certainly includes MPD. One way to make progress in this regard: The Council should form a youth council as part of the Office of Police Complaints.

### **Guardians First: Building a Trusted, Community-Centered Police Department**

One of the core recommendations of the President’s Task Force on 21st Century Policing is that police departments abandon the “warrior” model of policing—in which officers “fight crime” as though it’s a war and view the communities they police with suspicion—and instead embrace the “guardian” model, in which officers are guided by empathy and see themselves as public servants devoted to understanding, protecting, and working with

community members. All of the Commission's recommendations regarding MPD street encounters are rooted in the principle of harm reduction and aim to promote a guardian model of policing. So do recommendations that narrow the circumstances that require a police response. Being a guardian doesn't mean being involved in every crisis and dispute.

Police agencies also cultivate and maintain a guardian model through departmental structures and systems: proper education and training, thoughtful recruitment, effective officer wellness programs, performance evaluations and promotions that embrace guardian values, and routine internal audits of enforcement actions. The Commission recommends ways that MPD can improve policies and practices in each of these areas.

With funding from the Council, MPD should revamp its approach to training new officers. Specifically, MPD must fully implement in practice a collegiate model focused on teaching the skills officers need to think critically, problem-solve effectively, and exercise discretion appropriately. Academy courses must be uniformly taught in sequence for all recruits, so that more complex topics and skills build on foundational ones; and recruits must have opportunities to learn from community members with professional or lived expertise to share.

In addition to all the other specialized training recommended in this report, MPD should provide Academy training and annual refresher training on "active bystandership" to underscore every officer's duty to intervene to prevent fellow officers from engaging in misconduct. MPD also should provide in-service training annually to foster culturally competent, anti-racist policing—training that should be open to employees of other District agencies and members of the community.

The Council should revive the Police Officers Standards and Training (POST) Board by enhancing its membership; giving it more authority over training, recruitment and retention; and providing the funding necessary for it to have a permanent staff. The POST Board should also be empowered and required to maintain a registry of current MPD and DCHA officers, remove officers from the registry for cause or incompetence, and submit those names to the National Decertification Index currently run by the International Association of Directors of Law Enforcement Standards and Training. Equally important, the Council should make permanent that portion of the emergency legislation that prevents MPD from hiring officers who have engaged in serious misconduct in another department.

In terms of recruitment, MPD should fortify its efforts to hire individuals who are from or intimately familiar with the District (including by expanding the Cadet Program); who possess good interpersonal and communications skills; and who would enhance MPD's diversity and value diverse perspectives and experiences.

Studies show officers are at elevated risk of anxiety, depression, PTSD, high blood pressure, substance abuse, suicidal thinking, and other serious health issues. Addressing particular health concerns and promoting overall wellness is fundamental to a guardian model of policing, since undue stress affects an officer's behavior on the job. MPD should enhance its wellness programming and take steps to make sure officers know what help is available to them.

In the area of performance evaluations and promotions, the Council should establish a Public Advisory Board, made up of both community members and experts in police management. This board should be empowered to assess and refine MPD's processes for evaluating officer performance, promoting officers to supervisory and command ranks, and assigning officers to specialty units.

MPD should revamp its approach to training new officers. ...teaching the skills officers need to think critically, problem-solve effectively, and exercise discretion appropriately. ...The Council should revive the Police Officers Standards and Training (POST) Board, giving it more authority...

The Council should repeal the 65-year-old law passed by Congress requiring MPD to have a static minimum number of sworn officers. ...this law has no basis in reason and hampers the District's ability to allocate resources to MPD and other agencies based on data and other evidence about what improves public safety.

MPD should strengthen and expand its Data Quality Division to ensure routine and thorough internal audits of its officers' stops, searches, arrests, and uses of force. In its enhanced form, this Division would be responsible for all the data collection, analysis, and reporting the Commission calls for throughout this report. Bolstering the Department's audit function is essential to ensuring adherence to harm reduction principles. The Division will not only evaluate compliance with law and policy by officers, units, and department-wide, but also gauge whether enforcement strategies are effectively addressing serious crime—that is, whether they are, in fact, doing more good than harm.

Finally, the Council should repeal the 65-year-old law requiring MPD to have a static minimum number of sworn officers. Enacted before the District had its own Council, this law has no basis in reason and hampers the District's ability to allocate resources to MPD and other agencies based on data and other evidence about what improves public safety. The law even undermines MPD's ability to use its own resources most effectively—by hiring non-sworn expert instructors or civilian crime analysts, for example, instead of sworn officers.

### **Holding Police Accountable**

An effective police accountability system requires a variety of actors with complementary responsibilities acting in tandem. The District has some mechanisms in place but entirely lacks others. No accountability mechanism in the District is operating entirely as it should.

The Commission's cornerstone recommendation to promote MPD accountability for officer misconduct is to create a deputy auditor for public safety within the Office of the District of Columbia Auditor: an official with broad and substantial authority, required to release findings, at least bi-annually, with respect to the quality and timeliness of MPD and OPC investigations and the disciplinary process. Modeled after agencies that exist in other U.S. cities, a deputy auditor for public safety would substantially strengthen external oversight of MPD by providing both front-end accountability (proactive review of MPD policies, procedures, and practices designed to prevent things from going wrong) and back-end accountability (responses when things do go wrong).

The District also should bolster existing oversight entities: both the Police Complaints Board (PCB) and the Office of Police Complaints (OPC), which the board oversees. The Council and Mayor should move to expand the purview of the PCB, renaming it the District of Columbia Police Commission (DCPC). This reconstituted entity would continue to oversee the Office of Police Complaints and would also have authority to review and approve MPD policies prior to issuance that are not purely administrative in nature; play a role in selecting the police chief; participate in the process of setting MPD performance goals; and help make MPD more transparent.

Police commissions that review departmental policies and practices to ensure they are aligned with the needs and concerns of the community exist in Detroit, Kansas City, Los Angeles, Milwaukee, Oakland, and San Francisco. Public hearings or a single-issue task force should be devoted to fleshing out DCPC's precise mandate, authority, composition, and the process for selecting members.

The Council and Mayor should expand the jurisdiction, authority, and resources of the Office of Police Complaints (OPC). OPC should have the authority and resources to investigate all in-custody deaths and serious uses of force, *regardless* of whether a complaint has been filed, and to act on anonymous complaints. In addition, OPC should have statutory authority to recommend discipline for officers who are proven to have engaged in misconduct, and the ability to obtain relevant personnel records to make informed disciplinary recommendations. This broader scope of authority and work should enhance public trust in the District's ability to hold officers accountable.

Sunlight is said to be the best disinfectant. Secretive internal investigations and disciplinary processes leave the public in the dark—skeptical, doubting, and unable to hold the department or individual officers to account. The Council and the mayor should revise the Freedom of Information Act (FOIA) and explicitly make officers' disciplinary records public, as other jurisdictions have done. Based on these legal changes, the OPC and the MPD should create searchable public databases, like those that exist in New York City, enabling members of the public to easily access, for any officer, the status of open investigations, the outcome of administrative investigations, and the disciplinary action taken with respect to each act of misconduct. These changes, along with other FOIA revisions and recommendations we are making, would make MPD more transparent, and thus more accountable.

It's also important that MPD's disciplinary system comprehensively account for officers' prior disciplinary history. MPD should stop automatically purging "adverse actions"—the most serious level of discipline—from officers' personnel records after three years. They should be permanently recorded, and when disciplining an officer MPD should be able to consider any previous adverse actions against that officer. Even lesser "corrective actions" should not be automatically purged; officers should be required to demonstrate changed behavior.

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The Council and the mayor should revise the Freedom of Information Act (FOIA) and explicitly make officers' disciplinary records public, as other jurisdictions have done.

Given the pivotal role that body-worn camera footage may play in understanding events and holding officers accountable, reforms are needed in this area as well. To ensure the availability of body-worn camera footage in potentially fatal uses of force, MPD should install technology to automatically activate body-worn cameras when an officer draws their firearm. The law should strictly limit officers' access to body-worn camera footage (their own as well as footage from their colleagues' cameras) so as not to bias their initial reports. Research shows that video recordings can suppress or even replace actual memories. Notwithstanding this concern, and with consent of involved individuals or their next of kin, body-worn camera footage of officer-involved deaths and serious uses of force—ideally unredacted—should be released to the public within just a few days.

It is important to note that the Commission was not able to review files for specific investigations conducted by the OPC or MPD, nor did we have access to MPD disciplinary records. Thus, we cannot comment on the quality and timeliness of these investigations or the resulting determinations. Such a review is a critical task for a newly created deputy auditor for public safety.

The Commission's recommendations in this area include calling on the Council and Mayor to make permanent the provision in the emergency legislation that removes discipline from the collective bargaining process. As Council Chairman Phil Mendelson noted when introducing this amendment, collective bargaining agreements should not be used to shield police officers, or any public employees, from accountability. For too long they have been allowed to do so. The District has the opportunity to lead the nation in dismantling this long-standing hurdle to holding police accountable when they harm people.

### **Realign and Reduce**

As the above discussion and our complete report make clear, the District cannot achieve the public safety that all residents need and deserve if policing remains at the center of that effort. This overarching conclusion unifies the Commission's many recommendations. Decentering police requires shifting our collective focus and resources to invest far more in community-centered programs that prevent harm, while simultaneously realigning and reducing the size, responsibilities, and budget of MPD in line with a narrower scope of work for police. This shift must occur strategically: a smaller MPD does not guarantee a more community-responsive, less harmful, and ultimately more effective department.

In the next 12 months, the Council should adopt a plan that will strategically realign District agency budgets, including MPD's budget, so that funding and responsibilities are consistent with the recommendations in this report. This realignment, which should begin in FY 2022 and be complete by FY 2026, should include the following:

- ☒ Revising the police department's budgetary decision-making and oversight process and presentation to improve transparency *and* centering the voices of community members and organizations most impacted by harmful law enforcement practices.
- ☒ Increasing the number of personnel in community-building and alternative public safety programs *and* reducing the number of MPD sworn officers by at least the rate of attrition over the next five years, consistent with an independent audit that reviews MPD staffing, duties, and responsibilities. All mechanisms to achieve appropriate officer levels should be used, including attrition, buy-outs, early-outs, reductions in force (RIF), and retirement.
- ☒ Reducing MPD overtime to the fullest extent possible, especially un-budgeted overtime, which should be no more than three percent of MPD's annual budget.

The District relies on police more than other large cities. Based on data collected nationally in 2018, DC had more police officers per capita than any other large U.S. city, suggesting there is room to reduce the size of the police force, even before shifting any functions. While many cities have significantly reduced funding for police, MPD funding has *increased* by 12 percent since 2015. MPD's budget dwarfs the District's budgets for affordable housing, employment services, physical and behavioral health (and is less than human services).

Shifting some responsibilities from police to non-law enforcement agencies is supported by research and programmatic outcomes demonstrating that non-police interventions can improve public safety by addressing the root causes of crime and disorder. Reallocating resources in this way is a wise investment, has broad, bi-partisan public support, and is in line with trends nationally.

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# Realign and Reduce

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The unifying theme of this Commission’s recommendations is that to make communities safer and allow them to thrive, we must build a broader set of public safety programs, rather than over-relying on police to meet the needs of District residents. This means police should be one of many public safety actors, rather than be at the center of the District’s approach to public safety.

As we discuss in detail in the Introduction to this report, policing does not provide equal safety for everyone—especially not people of color in all their intersecting identities—and it never has. Policing has frequently and throughout our nation’s history been a tool of systemic racism.

Policing also focuses on the symptoms of crime, not its root causes, often in ways that lead to more disorder, crime, violence, and suffering in communities where healing and safety are needed most. Only by shifting our collective focus and resources to address racialized poverty, widespread trauma, and underinvestment coupled with over-policing in communities of color, can the District begin to create a city where everyone, not just a privileged few, feels seen, safe, and valued; a city in which thriving, not merely surviving, is within everyone’s reach.

When this Commission says that police need to be decentered as the primary source of public safety, we inevitably mean the Council must invest far more in community-centered programs that prevent harm while simultaneously realigning and reducing MPD’s size, responsibilities, and budget in line with this narrower scope of work.

Our recommendations, presented and discussed in the following eight sections of this report, move the District in that direction by calling for the scale-up or creation of social infrastructures—of services and supports that fully meet people’s needs with care instead of criminalization, especially when they are vulnerable or in crisis. Equally important, we call on the District to reduce the footprint of police in communities, which includes removing officers from all public schools; to end particularly harmful MPD strategies and tactics; and to hold police more accountable in order to promote better service and stem abuses. In both these areas, we’re calling for a community-led approach to public safety in which the people of DC are invested in one another’s health and well-being. Indeed, there is overlap between what the Commission is recommending and the recommendations of BIPOC-led coalitions of District residents, advocates, and organizations, including Defund MPD. It is important that the Council consider not only this Commission’s recommendations but also all the work being done outside the Commission, in developing and implementing a plan for building community alternatives to policing and resizing and reducing MPD.

When this Commission says that police need to be decentered as the primary source of public safety, we inevitably mean the Council must invest far more in community-centered programs that prevent harm while simultaneously realigning and reducing MPD's size, responsibilities, and budget in line with this narrower scope of work.

This shift must occur strategically: a smaller MPD does not guarantee a less harmful or more community-responsive department. Equally important, community members and organizations directly impacted by decades of under-investment and over-policing must be fully involved in realigning responsibilities and resources. Otherwise, the District risks creating a different set of oppressive policies and structures that are no more accountable to people of color.

This overarching call to action, supported by the Commission's many recommended changes in policy, practice, and funding that describe *how* to decenter police, is a charge to DC city leaders to embark on a new era of safety, health, and prosperity for all.

**Recommendation: To provide better community safety and neighborhood health, beginning in FY 2022, the Mayor and the Council should increase investment in programs that prevent violence and reduce harm, provide a more effective, non-law enforcement response to individuals in crises, and support the successful reentry of people returning home from incarceration.**

**To help fund this more comprehensive approach to public safety, and to help ensure that the District does not revert to the current harmful over-reliance on policing and incarceration, this investment should be accompanied by a realignment and reduction of MPD's size, responsibilities, and budget. To advance this reallocation of responsibilities and resources, the District should evaluate and consider the following steps, beginning in FY 2022:**

1. Revising the police department's budgetary decision-making and oversight process and presentation to improve transparency.
2. Revising the police department's budgetary decision-making and oversight process to center the voices of community members and organizations most impacted by harmful law enforcement practices.
3. Increasing the number of personnel in community-building and alternative public safety programs.
4. Reducing the number of MPD sworn officers by at least the rate of attrition over the next five years, consistent with the determination of an independent audit that reviews MPD staffing, duties, and responsibilities, including which functions can be shifted from sworn to non-sworn positions.
5. Reducing MPD overtime to the fullest extent possible, especially un-budgeted overtime, which should be no more than three percent of MPD's annual budget.

## **Discussion**

The recommendations in this report collectively de-center policing in order to provide more effective and less harmful public safety services to all communities in the District of Columbia. Many of the Commission's carefully considered recommendations for building up other government and community-based programs to share public safety responsibilities necessarily entail shifting resources and responsibilities away from MPD. These budget recommendations thus are a critical element of reimagining public safety to make it more effective and equitable, although they are less ambitious than the requests of many advocates.

There is national, bipartisan support for funding violence interrupters rather than continuing traditional policing methods. Four out of five likely voters support community-based programs designed to interrupt and prevent violence, and a clear majority believe they are more cost-effective than increasing the number of police.<sup>43</sup>

National research, best practices, and experience point to non-law enforcement interventions that improve public safety and are effective in both appropriately responding to incidents and helping to prevent them from happening. The shift of responsibility from MPD to other agencies is also based on evidence and programmatic outcomes demonstrating that non-police responses are effective in protecting and even enhancing public safety and addressing the underlying factors that can lead to someone being involved in criminalized activities. Reallocating resources to non-law enforcement responses is an investment in advancing public safety.

**This shift must occur strategically: a smaller MPD does not guarantee a less harmful or more community-responsive department. Equally important, community members and organizations...must be fully involved in realigning responsibilities and resources.**

Reconsidering long-held assumptions about the role of policing in public safety, investing in non-police public safety and community-building programs, and resizing the police department and its budget, all align with national trends.<sup>44</sup> Many large cities significantly reduced their police budgets in 2020. In contrast, the District of Columbia has increased MPD's budget by 12 percent since 2015.<sup>45</sup> The budget for policing dwarfs the budgets for affordable housing, employment services, physical and behavioral health (and is less than human services).<sup>46</sup> This over-investment in policing as the primary, and often exclusive public safety response, has failed to effectively reduce violent crime. Rather than continuing to increase investments in an approach that is not working and that causes unnecessary harm, the District should broaden its public safety strategy by investing in an array of community- and government-based services that, together, can provide effective public safety and help communities thrive.

It is critically important to note that it may be unhelpful, or even harmful, to reduce MPD's size and budget without also making qualitative changes to the Department and, most importantly, investing in community health and public safety in the manner discussed throughout this report.

### **1. Revising MPD's budget process and presentation to improve transparency.**

The Council should require MPD to immediately publish, by line-item, its current budget and its expenditures over the past three fiscal years. MPD should engage the community to understand the kind of budget information that would be most helpful for the public, and then change its budget presentation format to reflect that.

### **2. Revising MPD's budget process and presentation to center the voices of community members and community-based organizations most impacted by harmful law enforcement practices.**

In determining exactly how much of the District's budget should be reallocated from MPD or elsewhere to accomplish both short-term and long-term changes recommended by this Commission, the Council and the Mayor should include in the decision-making process people who have devoted themselves to rethinking public safety.

Community engagement should include public budget forums specifically on the MPD budget every cycle, attended by the deputy mayor for public safety and the Chief of Police. MPD should present and explain its spending in the previous year and its budgetary decisions for the year ahead, and hear comments and concerns from community members, in advance of the Mayor finalizing budget recommendations.

### **3. & 4. Increasing the number of personnel in community-building and alternative public safety programs while reducing the number of MPD sworn officers.**

In the next 12 months, the Council should adopt a plan to strategically realign the District's agency budgets, including MPD's budget—beginning in FY 2022 and with a completion date by FY 2026—so the budgets align with ongoing community input and the recommendations of this report, which include investing in community-building programs; deprioritizing and limiting MPD's involvement in certain types of events and circumstances; demilitarizing the police force;<sup>47</sup> and making structural changes to decriminalize Black and Brown youth.

This realignment is necessary to ensure that a more comprehensive, less harmful approach to public safety is successful. The necessary investment in community and violence reduction programs is likely greater than MPD's budget, but it is important that MPD's budget be reduced as part of this realignment and shift in responsibility. It is also important that this budget realignment be accompanied by a thoughtful, independent consideration of MPD's core function; that is, what should MPD continue to do, and how should it do it, once the appropriate de-centering and shift in responsibilities and resources is complete.

This independent audit should be conducted by an entity such as the DC Fiscal Policy Institute or the District Auditor. Some MPD functions may shift out of MPD entirely, others may shift from sworn officer positions to non-sworn employee positions. The scope of MPD's responsibilities should be carefully but fundamentally narrowed so that, even with a smaller budget overall, rather than being spread too thin, MPD has the resources it needs to successfully carry out its portion of the District's broader public safety response.

The Commission recommends that this build-up of community investment and resizing of MPD begin in FY 2022 and continue by at least the rate of officer attrition over the next five years, consistent with the determination of the independent audit noted above.

We focus the realignment of MPD's budget on sworn positions because 90% of the MPD budget supports personnel, and most of that reflects salaries and fringe benefits for sworn officers.<sup>48</sup> De-centering policing and shifting police functions to other agencies must therefore include a similar realignment in the number of MPD officers. In considering this recommendation, it is important to note that the District of Columbia relies on police significantly more than other large cities. Based on data collected nationally in 2018, DC had more police officers per capita than any other large city,<sup>49</sup> suggesting there is room to reduce the size of the police force, even before any functions are shifted. As of December 2020, there were 2,368 sworn positions and 688 non-sworn positions.

MPD concentrates its surveillance and arrest efforts almost exclusively on Black people and poor people. As the number of Black people and poor people residing in the city dwindles, these remaining neighborhoods become even more saturated with police.<sup>50</sup> During just five months, from July 22 to December 31, 2019, MPD recorded 63,000 pedestrian and traffic stops, 72 percent of which involved Black individuals.<sup>51</sup> These tactics have failed to reduce the District's homicide rate.

While the Commission believes that all tools to achieve appropriate officer levels need to be available—including buyouts, early-outs, reductions in force (RIF), and retirement—discussions with Councilmembers and MPD leadership suggest that the only opportunity at this time to shift resources from MPD to a broader public safety response would be by attrition. While the Commission recommends that the annual reduction during the next five years match MPD's officer attrition rate, we equally urge District leadership to achieve this goal through a variety of methods and not rely solely on attrition, in order to maintain a high standard of service rather than a diminishment

of service. Nor should the District reject the possibility of larger reductions based on the actual experiences of shifting functions to other public safety programs, and the results of the independent audit.

**5. Reducing overtime to the fullest extent possible, especially unbudgeted overtime, which should be no more than three percent of MPD's annual budget.**

The top 25 earners in MPD netted between \$100,000 and \$200,000 in overtime pay, on top of their base salaries, in 2019.<sup>52</sup> Overtime costs represent five percent of MPD's budget and six percent of personnel costs. Last year, MPD spent twice as much, necessitating a divestment of \$43 million from other agencies, including \$28.3 million from the Department of Health Care Finance in the midst of the coronavirus pandemic.<sup>53</sup> The Commission recognizes that overtime is a necessity due to holidays, parades, and unanticipated protests or other large gatherings but also makes distinctions between types of overtime, including:

1. Overtime in response to inaugurations and federal requests for service. When MPD is requested by federal partners to provide service, all such support should continue to be compensated by federal funds rather than the local budget.
2. Overtime for recurring but expected events, such as holidays, parades, protests, and other large gatherings. This overtime should be calculated based on the past three years and included in the annual budget.
3. Overtime for unexpected protests and large events. This overtime is unbudgeted and has a significant and negative impact on core city services, especially for vulnerable communities. This unbudgeted overtime should be capped at no more than three percent of the MPD budget in any given fiscal year.

# Section I: Meeting Crisis with Specialized Skill and Compassion

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## OVERVIEW

Suicidal threats and other behavioral health crises, drug overdoses, emergencies involving young people and individuals with developmental disabilities, domestic violence, and other life crises should be met with specialized intervention and skillful de-escalation rather than forced compliance and arrest. In fact, the involvement of an armed police officer can make these situations much worse.<sup>54</sup> Take as a tragic example the police killing of Daniel Prude in Rochester, New York. Rochester police suffocated Prude, a Black man with known mental health issues, when they restrained him during what's known as a “mental health wellness check.” Prude was in such a crisis that his brother, who could not help him, called 911—but there was no reason to believe Prude was a danger to anyone other than himself.

Relying mainly or exclusively on police as crisis responders unnecessarily puts both residents and officers at risk of harm. It is a fundamental misuse of law enforcement resources that leads to unnecessary contact with already over-policed and underserved communities, perpetuating fear and mistrust of police, while often leaving peoples' needs unaddressed.<sup>55</sup> Behavioral healthcare professionals and other specialists, who operate from a trauma-informed, anti-racist, culturally- and community-competent perspective, should be the first resort and accompanied by police only when there is a significant risk to public safety. Because officers will be part of a co-response in some situations, they must have specialized training on how to engage with and transport individuals in crisis in a manner that physically protects them, minimizes further trauma, and preserves their dignity.<sup>56</sup>

While the next section of this report includes specific proposals to strengthen the social safety net for DC's vulnerable and marginalized community members, understanding the gaps in social services is key to understanding the shortcomings of the current emergency response system. DC's poorest neighborhoods are majority Black and Brown communities. In these communities, the dearth of basic resources such as shelter and healthcare causes residents to rely on emergency services, and as a result, to encounter police more often.<sup>57</sup>

Roughly one in five DC residents experiencing homelessness or housing insecurity are also dealing with an undiagnosed or untreated mental illness and/or substance use disorder.<sup>58</sup> Members of these communities are less likely to receive proper diagnosis and treatment; more likely to rely on emergency rooms than specialists for care; and more likely to encounter police than a healthcare professional when experiencing a crisis.<sup>59</sup> People with serious

mental illnesses are 16 times more likely than others to be killed during a police encounter.<sup>60</sup> The same dynamic is true for individuals with disabilities. In making recommendations to improve the District's support for people with disabilities, the DC Developmental Disabilities Council (DDC) notes, "People of color who also have disabilities are disproportionately represented in the number of people who have been harmed by police officers."<sup>61</sup>

Law enforcement should be one option in an array of emergency responders, and not necessarily the first option.

This does not have to be the case. Most 911 calls do not require an armed response. A WUSA9 TV analysis of Washington, DC 911 data revealed that only 8.4 percent of callers reported a violent crime, while more than one-fourth of the 940,000 calls to 911 from January 2019 to June 2020 involved noncriminal activity. Fourteen percent of the calls analyzed involved a behavioral health issue of some kind,<sup>62</sup> and anecdotal information suggests most of these calls do not require a police response.

Anthony Hall, director of the Department of Behavioral Health's Community Response Team (CRT), told the Commission that his team is usually able to de-escalate on the scene without MPD support; but at its current operational capacity the CRT cannot provide a timely emergency response. Jaline Gilliam, a licensed clinical social worker and clinical director of Pathways to Housing DC, echoed this view, saying that her team and other behavioral health professionals are best suited as first responders to these calls and have success de-escalating these situations without physical harm to anyone involved.

DC government must heed the experts and deploy behavioral healthcare professionals and other specialists to respond to people in crisis. This should include increasing the number of domestic violence advocates and allied social workers and counselors who can safely function as first responders; and expanding community-based 24-hour crisis responders with links to emergency shelter for survivors of sex trafficking. This shift requires increased investments to build that corps of specialized first responders and support their ability to respond quickly and effectively. It also requires adjustments to the 911 dispatch system.

The 911 system is the centerpiece of a city's emergency response network, and the number residents rely on most. The District is already considering ways to improve 911 operators' ability to dispatch appropriate non-police professionals to calls involving behavioral health crises. The Commission supports these efforts and encourages the Council and Mayor to engage behavioral healthcare and other service providers, and residents themselves, to ensure that the updated system meets the needs of impacted communities.

Law enforcement should be one option in an array of emergency responders, and not necessarily the first option. By expanding or creating alternative emergency response models, the District can limit unnecessary and potentially harmful police interactions with community members who are not a threat to others. These models must be accompanied by enhanced training for all MPD officers to uphold human dignity and minimize harm when a potentially dangerous situation requires their involvement and support. A range of community-based organizations currently provide as much specialized support to community members in crisis as their limited resources allow. With greater investment and community input, DC can center health and well-being in its emergency response system.

## Recommendations

1. **Recommendation: Make community-competent behavioral healthcare professionals the default first responders to 911 calls involving individuals in crisis. Specifically:**

**1(a) Recommendation:** The Council should immediately commission an independent assessment of the Community Response Team (CRT) and Children and Adolescent Mobile Psychiatric Service (ChAMPS). That assessment should be completed within six months and include the views of impacted residents and community-based behavioral healthcare providers. Results of the assessment will determine whether CRT and ChAMPS should be scaled up to provide a bona fide 24/7 emergency response to individuals in crisis throughout the District.

Based on findings from the assessment, the Council should provide the funding needed to scale up, refine, and operate CRT and/or ChAMPS as emergency first responders in all Wards; or if these interventions are not suitable for expansion, provide funding for the Department of Behavioral Health (DBH) to solicit bids from DC community-based healthcare providers to perform this function. In either case, the Council must ensure there is a dedicated and specialized team of behavioral healthcare professionals to respond to crises involving children.

**1 (b) Recommendation:** Once a system of behavioral healthcare first responders is in place, the Council should prohibit MPD from conducting wellness checks.

**1 (c) Recommendation:** The Council must ensure the District has reliable systems in place to deploy this expanded corps of behavioral healthcare first responders to handle appropriate 911 calls (see Recommendation 8 below for our recommended changes to the Office of Unified Communications) as well as calls to DBH's 24/7 Access HelpLine.

**1 (d) Recommendation:** In addition, these behavioral healthcare professionals should have a regular presence in communities and conduct proactive outreach to residents in need, as the existing CRT does, but on a larger scale.

### Discussion

The Council must begin a process to disengage MPD from non-violent crisis response with the result being bona fide 24/7 non-police teams providing emergency response to individuals in crisis districtwide. This includes specific non-police response teams for children, qualified to address the particular vulnerabilities and needs of children, regardless of a formal behavioral health diagnosis. These crisis responders must be thoroughly vetted to ensure they offer trauma-informed, anti-racist, and community-competent care. These teams must also be able to obtain accurate information while protecting the rights of non-English speakers, Deaf and Hard of Hearing people. This change cannot wait.

The Council should start this process by assessing the viability of an expanded CRT and an expanded ChAMPS to fill that role. These assessments should evaluate elements including average response time; resolution of crisis teams' interventions (on-the-scene de-escalation, voluntary or involuntary hospitalization); any refusals from either program to respond and the reasons; incidence of injury to the person in need or crisis team members; and

incidents that required MPD support, and source of referral (911, MPD, person in crisis, family member, or observer). The Council must ensure that the voices of DC's most impacted residents are invited, elevated, and honored in this assessment. Reports from the Council for Court Excellence (CCE) and recommendations made by the DC Developmental Disabilities Council (DDC) highlight the need for a community-engaged process to assess and improve programs for community members with mental illnesses and disabilities.<sup>63</sup>

A range of community-based organizations currently provide as much specialized support to community members in crisis as their limited resources allow. With greater investment and community input, DC can center health and well-being in its emergency response system.

If, based on these assessments, the Council determines that the CRT and ChAMPS should be expanded to operate as true 24/7 rapid districtwide crisis response teams, then the Council, with support from the Mayor, must make the appropriate investments to make that happen. If the CRT and ChAMPS are not the right agencies for this role, the Council must identify and invest in alternative community-based agencies.

The Council attempted to move DC's emergency response system in this direction with the NEAR Act. But the agencies tasked with creating alternative crisis responders have not yet met that mandate. With Title 1C of the NEAR Act, the Council mandated the creation of "community crime prevention teams," pairing mental and behavioral health clinicians and outreach specialists with MPD officers, to immediately identify individuals in need of assistance and connect those who may be impacted by homelessness, mental illness, or substance abuse with available services. Recommendation 2 in this section explores this further and proposes that the responsible agencies carry out the NEAR Act's mandate of co-response teams. However, the Commission urges the Council to go even further than it did in the NEAR Act.

The Office of the Deputy Mayor for Public Safety and Justice counts Title 1C of the NEAR Act as fully funded and implemented.<sup>64</sup> As the next recommendation details, that is not the case. Instead, the Department of Behavioral Health (DBH), the Department of Human Services (DHS), and MPD piloted a pre-arrest diversion program wherein certain officers in certain districts were trained and authorized to divert individuals facing chronic mental illness and substance use disorders to treatment instead of arrest. DBH was designated to hire the primary program staff.<sup>65</sup>

This led to DBH's creation of the Community Response Team (CRT), a multi-site 24/7 model of care consisting of a multidisciplinary team of licensed clinicians, community behavioral health specialists, and individuals with lived experience.<sup>66</sup> The CRT was designed to: conduct on-the-spot assessment and referral to behavioral healthcare; regularly engage individuals living with unmet needs to encourage treatment; connect to support services including employment, education, and economic benefit programs; offer harm reduction options such as life-saving naloxone while promoting treatment; and support diversion from the criminal justice system for low-level behavioral health-related offenses. The CRT receives about 120 crisis calls a week through its hotline and travels to homes or community locations. Most calls are resolved onsite with individual counseling and de-escalation techniques. About 20 percent require involuntary treatment or execution of an FD-12 (see recommendations 2 and 3 below).<sup>67</sup>

ChAMPS is a similar program, operated by Catholic Charities with support from DBH and designed to provide on-site immediate help to children ages 6-17 facing a behavioral or mental health crisis whether in the home, school, or

community. The CRT's and ChAMPS's multidisciplinary approach is aligned with national best practices in non-emergency civilian behavioral health response programs.<sup>68</sup> Neither ChAMPS nor the CRT, however, are *bona fide* 24/7, districtwide, emergency responders.

MPD officers, community providers, and residents all report a gap in DC's behavioral healthcare system: There is not a *bona fide* emergency response team available to respond instead of or even along with police. ChAMPS and the CRT have not been able to meet the demand for their services, due presumably to deficiencies in staffing, public awareness, and resources generally.<sup>69</sup> In a conversation between DBH Director Dr. Barbara Bazron and the Anacostia Coordinating Council, Shawn Jegede, DC resident and mother to a son with Autism, said: "I've talked to local providers and I'm being told they are not allowed to help children with Autism, said they are not allowed to provide services."<sup>70</sup> At the same meeting, Advisory Neighborhood Commissioner 8B04 Darrell Gaston opined, "ChAMPS is supposed to deal with emergency situations but they are ineffective." Representatives from DBH confirm that the CRT is not equipped to provide a true emergency response. If a call for service requires such a response, MPD responds.

In most of these cases, an armed response is not required. The most recent report on behavioral health calls answered by MPD officers reveals that behavioral health calls in DC rarely involve violence. Of 2,894 such incidents, suicide threats and depressed behavior were the most common behaviors reported; weapons, most commonly knives or other sharp objects, were present in only 7-10% of incidents; the level of resistance by the individual in crisis was "cooperative" or "passive" in 87-89% of incidents; and injuries to the responding officer were reported in only 1-2% of cases.<sup>71</sup>

Leading models for emergency response divert any emergency call involving confirmed or suspected behavioral health crises to non-police response teams, absent any indication of violence or a lethal weapon. Instead of police officers, a qualified team consisting of medical professionals (such as a nurse or an EMT) and social workers respond to calls involving mental health, addiction, and homelessness. To determine which calls require this team, a city's 911 operators assess whether a 911 call "involves a legal issue or some kind of extreme threat of violence or risk to the person, the individual or others." If that is not the case, a 911 operator may send a non-police crisis team to respond. When they arrive at the scene, this team can provide services such as stabilization in case of urgent medical need or psychological crisis; as well as assessment, information, referral, advocacy, and, in some cases, transportation to the next step in treatment.<sup>72</sup>

The model for many emerging proposals (including in San Francisco, Oakland, Los Angeles, Denver, and Minneapolis), the CAHOOTS program—Crisis Assistance Helping Out on the Streets—has been in place in Eugene, Oregon since 1989. It is run out of the White Bird Clinic in Eugene and operates in coordination with—but not under the direction of—the Eugene Police Department. Its team of EMT and crisis intervention responders handles nearly 20% of all calls for service in the Eugene metropolitan area, with a particular focus on homelessness, suicide prevention, acute mental health and substance abuse issues, domestic violence, mediation, and service referrals. CAHOOTS has been the leading model, yet until this year, it was not a 24/7 service.<sup>73</sup> Nor is CAHOOTS equipped as a rapid crisis response service: in 2019, response times averaged upwards of an hour. Using the CAHOOTS model with 24/7 service, the District could be *the* leader in this work if it acts now.

The District must de-center police as the primary responders to community health issues and replace them with *bona fide* 24/7 non-police crisis response teams staffed by community behavioral healthcare providers with meaningful ties to the communities they are deployed to serve.

2. **Recommendation:** Create the Community Crime Prevention Teams required under the NEAR Act, or another behavioral health/police co-response model to be deployed districtwide in situations where an individual in crisis has a weapon or for some other reason poses a significant danger to others.

**2 (a) Recommendation:** The Council should require the Department of Behavioral Health (DBH) and MPD to create co-response teams staffed by experienced behavioral healthcare professionals who co-train with specially selected MPD officers for whom this is their primary assignment. Co-training must correspond with best practices and promote a community-attuned, anti-racist, de-escalating response to individuals who may not trust police officers or healthcare professionals based on negative experiences in the past.

**2 (b) Recommendation:** DBH, not MPD, must have primary responsibility for managing these teams on a daily basis and for overseeing their staffing and performance more broadly.

**2 (c) Recommendation:** The Council must ensure the District has reliable systems in place to deploy these co-response teams to handle appropriate 911 calls (see Recommendation 8 below regarding changes to the Office of Unified Communications).

## Discussion

MPD officers need more options and support to resolve incidents that require specialized skill. Take as an example the case of Eric Carter, a man who was fatally shot by MPD after his mother called 911 to report that he had shot his brother.<sup>74</sup> Officers, aware that Mr. Carter had a history of mental illness, responded to the scene to find him wielding a gun outside of the apartment building where the Carters resided. MPD exchanged shots with Eric Carter while his brother died inside the building.

In this case, MPD officers were absolutely the correct responders to send to the Carter home. But if they had been aided or advised by mental health professionals—perhaps someone who had treated Eric Carter—MPD might have achieved a better outcome. If MPD had some records or notice attached to the Carter home address that provided additional information about Eric Carter’s illness, or about the healthcare providers who provided him treatment, one or both Carter brothers might have survived. We’ll never know.

The Crisis Intervention Officer (CIO) program in DC began in 2009 as a collaboration between MPD and DBH. Nationally, the program is called Crisis Intervention Teams (CIT), but the District elected to certify individual officers as CIOs rather than teams of officers, with the aim of decreasing response time and providing specialized training to more officers (See Recommendation 4).<sup>75</sup> Still, without the benefit of real-time guidance from trained professionals with years of experience rather than just 40 hours, MPD’s crisis intervention efforts are not working as well as they could. The CIOs transported individuals in crisis to hospitals for psychiatric evaluation in 81-84% of incidents.<sup>76</sup> Compare that to the CRT’s psychiatric hospitalization rate of 20%.<sup>77</sup> The CRT provided on-scene counseling and de-escalation in the majority of calls to which the team responded. Psychiatric hospitalization is a traumatizing experience, particularly for someone experiencing a crisis. Being handcuffed and taken by police transport (even with a specially trained officer) exacerbates that trauma and adds to mistrust and fear of police.

This summer, increased activity and police presence near Black Lives Matter Plaza displaced many of our homeless neighbors living in the area, some of whom have a mental illness and/or substance use disorder. According to one report from 2020, MPD officers observed that a man known as ‘D’ was experiencing a behavioral health crisis. He

was carrying a stick and shouting at a t-shirt vendor. When officers approached him, D grew more agitated and things escalated, a press report recounts:

A Black man who reportedly struggles with schizophrenia and homelessness was handcuffed and shackled by the ankles at the plaza. As he lay on the ground he yelled to bystanders for help. He was then carried by four Metropolitan Police Department officers who attempted to slide him into a squad car but, due to his attempts to resist and the way he was bound, the short man could not be forced into the back seat.

“Ahhhh — they pulling me by the chains,” the man yelled as one MPD officer was leaning into the opposite side of the car where the man’s legs would have been on the seat. “He’s pulling me by the chains!”

The man was ultimately led to a van, Wagon 22, which left the plaza roughly 15 minutes after the arrest began.<sup>78</sup>

Just seven days earlier, D was arrested by Secret Service officers. D had approached the officers saying, “Help me, help me, shoot me.” When D refused medical treatment, the officers took him to MPD’s Second District station; then, when he complained of an injured wrist, they transported him to Sibley Hospital where he is alleged to have threatened and assaulted hospital staff and officers; then they took D to Central Cell Block; then back to the Second District; then back to Central Cell Block; then back again to the Second District. Finally, officers took D to the Psychiatric Institute of Washington, where he was refused treatment “because there was no room for him.”<sup>79</sup> They took him back to Sibley.

The MPD and Secret Service officers involved in D’s ordeals used the tools they were trained to use—but these were not the appropriate tools to safely and effectively address D’s needs. With the benefit of professional expertise, that week of D’s life might have ended with referrals for the long-term treatment he really needed. CIOs could have achieved a different, less harmful result—such as immediate hospitalization—but still not a solution that would serve D in the long term.<sup>80</sup>

The DC Auditor found that “[t]he [CIO] program has been effective in connecting people with emergency psychiatric treatment, but the program’s scope limits its ability to provide lasting help beyond the point of crisis.”<sup>81</sup> From FY 2011 to 2016, CIOs only referred people to case management (through DBH) four percent of the time.<sup>82</sup> Only four percent of people were connected to long-term care. The Auditor concluded that a CIO program alone was not adequate. It should be noted that the Auditor’s report was published before the pre-arrest diversion pilot which led to the creation of the CRT. A 2020 CCE study conducted on behalf of the DC Auditor did not produce sunnier findings.<sup>83</sup>

One of the country’s leading departments for crisis intervention is our Maryland neighbor, the Anne Arundel County Police Department. Anne Arundel County’s Crisis Intervention Team Unit began as a pilot program that gave mobile crisis teams—pairs of mental health clinicians—police radios and police call signs. The mobile crisis teams assisted patrol officers responding to calls related to youth, traumatic events, homelessness, substance use, family violence, and elder issues.<sup>84</sup> Eventually the program was formalized with the creation of the Anne Arundel County Crisis Intervention Team Unit. The unit added co-response teams, pairing police officers with mental health clinicians, and left the non-police mobile crisis teams intact. In June 2020, a team of these co-responders and police negotiators was able to safely take into custody an armed man who had barricaded himself in his apartment.<sup>85</sup> Mobile crisis teams are available and on call to assist the public in the wake of tragedies like the *Annapolis Capital Gazette*

shooting and to provide services to families following homicides. The co-response teams also provide support to fellow officers along with peer support teams.

Police officers are the appropriate responders when there is a threat to public safety. When a call for service also involves an individual with special behavioral health needs, officers must respond with the expert leadership of a behavioral healthcare professional, and officers must have comprehensive knowledge of mental health, disabilities, and substance abuse concepts and symptoms, as well as local resources, local laws, suicide prevention, and de-escalation techniques. In the NEAR Act, the Council acknowledged the importance of such safeguards—and the District must act now to ensure that these safeguards are in place.

- 3. Recommendation: The Council should amend DC Code Sec. 21-521 which governs involuntary commitment (FD-12), making it truly a last resort undertaken only by behavioral healthcare professionals and in ways that avoid further traumatizing people.**

### **Discussion**

The District must restructure the FD-12 process to limit police involvement; ensure the availability of observation beds when an FD-12 is initiated; and expand and prioritize long-term treatment over involuntary hospitalization (see Section II). Initiation of the FD-12 process to hospitalize an individual against their will is a treatment option that should only be pursued under limited circumstances and when there is not a viable, safe, less restrictive alternative. When circumstances require involuntary commitment of a person, steps must be taken to protect that person from further physical or psychological trauma.

Currently, Washington, DC permits MPD officers—the majority of whom do not have crisis intervention training—and DBH officer-agents to initiate the involuntary commitment process (FD-12).<sup>86</sup> Officer-agents are healthcare practitioners who are trained and certified by DBH to carry out the FD-12 process.<sup>87</sup> Once an MPD officer or an officer-agent arrives on the scene, they determine if the individual is at risk of hurting themselves or others. If the individual in crisis voluntarily goes to the Comprehensive Psychiatric Emergency Program (CPEP), the DBH officer-agent or an adult family member may arrange transportation.<sup>88</sup> Otherwise, MPD searches and handcuffs the individual, then transports them to the CPEP.<sup>89</sup> The CPEP is DC's 24/7 emergency psychiatric operation located on the former DC General Hospital campus.<sup>90</sup> There, program staff determine whether to admit or treat and release the individual.<sup>91</sup> Due to COVID-19 restrictions, the program currently operates 14 involuntary commitment beds.

If CPEP does not have the capacity to assess or treat the individual, they remain in MPD custody to be transported to one of three local emergency psychiatric facilities.<sup>92,93</sup> Behavioral healthcare professionals indicate that it is not unusual for a person in crisis to spend an extended period of time with MPD officers attempting to locate available observation or treatment beds.<sup>94</sup> The Department of Behavioral Health reported an increase in CPEP admissions from approximately 2,300 in fiscal year 2019 to approximately 2,400 in fiscal year 2020.<sup>95</sup>

About one-third of people brought to CPEP are involuntarily hospitalized for a period of 72 hours, during which they have no outside contact.<sup>96</sup> In 2018, the DC Auditor reported that involuntary commitments rise in winter months, “when the police and others are more aggressively checking for people who are sleeping outside in freezing temperatures.”<sup>97</sup> This trend suggests that the absence of long-term treatment and reliable housing—rather than acute mental illness rendering someone a harm to themselves or others—are at least partly to blame for involuntary commitments.

### *Limit MPD Involvement in FD-12s*

The Substance Abuse and Mental Health Services Administration characterizes involuntary commitment as “a significant limitation of liberty—the kind of limitation that is rare outside of the criminal justice system.”<sup>98</sup> Tasking agents of the criminal justice system—MPD officers—with enforcing involuntary commitment unnecessarily exacerbates the trauma of this experience for individuals in crisis, and misuses MPD time and resources. This is especially true when the officers facilitating involuntary hospitalization do not have crisis intervention training or real-time guidance from behavioral healthcare professionals (see Recommendation 2). Most officers do not have the benefit of this training. CIOs and officer-agents receive specific training on the FD-12 process in the CIO program and through biannual refresher training. As of 2018, a combined 120 officers and officer-agents had received this training. The DC Auditor reported that DBH provides a less intensive training on mental health and substance use—called “CIT light” by some—to all new MPD recruits while they are enrolled in the Police Academy.<sup>99</sup> Members of MPD acknowledged that “CIT light” may not reach all new recruits.

Community-based organizations shared with the Commission that MPD involvement in this process also leads to decreased trust between them and their clients due to fear that they will be arrested when seeking help.<sup>100</sup> Staff from Community Connections, a community-based behavioral healthcare provider, also report difficulty tracking their clients who have been committed.<sup>101</sup> The lack of communication between MPD and behavioral healthcare providers further damages the client relationship and hampers providers’ ability to care for their clients.

### *Prioritize Long-Term Treatment Options over Repeat Commitments*

DC government should establish additional observation and assessment options to ensure that individuals who are at risk of harming themselves or others receive the emergency treatment they need in a timely manner. This includes increasing the capacity of existing facilities to triage individuals in crisis, and may also include building additional psychiatric triage facilities throughout the District. This should be a last resort, undertaken only when necessary and not due to a shortage of long-term treatment options.

The District must simultaneously expand voluntary inpatient treatment options. Coercive treatment undermines an individual’s autonomy and is rarely the most effective response to a behavioral health crisis.<sup>102</sup> The DC Auditor reported that DC’s emergency psychiatric facilities “are equipped to handle involuntary transports,” but “they are not the most adept at linking someone to ongoing services,” meaning that “individuals would likely be sent to the psychiatric emergency system more frequently than should be necessary.”<sup>103</sup> The Council must provide funding to DBH to increase the number of crisis beds—voluntary in-patient behavioral healthcare placements in the community—to address the gap in long-term behavioral healthcare. There are currently a combined 16 crisis beds at Jordan House and Crossing Place-Woodley House for individuals experiencing a psychiatric crisis who do not meet involuntary commitment requirements (both facilities are funded by DBH).<sup>104</sup> Attempts in 2020 to expand Woodley House were opposed by neighborhood residents concerned about property values and public safety. Their opposition quashed the expansion effort.<sup>105</sup> The District must build a campaign around future efforts to expand community mental health services in order for these efforts to prevail.

In 2018 DC’s involuntary commitment process earned an “F” from the Treatment Advocacy Center. The research-based scorecard system grades inpatient care and outpatient care, with each type of care capable of earning up to 50 points. Based on the criteria included, DC earned 18 points on inpatient care and 38 points on outpatient care, for an overall score of just 56 out of 100.<sup>106</sup> With the support of the Council and the Mayor, DBH must address the shortage of voluntary inpatient behavioral healthcare services so that emergency hospitalizations are rare occurrences.

When addressing the gaps in services, DBH must seek and act on feedback from clients and their families to ensure that community members experiencing a behavioral health crisis receive appropriate care.

4. **Recommendation:** Because patrol officers are likely to encounter individuals in crisis and may need to engage the person until a specialized responder arrives, every MPD officer must complete 40 hours of crisis intervention training (CIT). To supplement this, the Council should provide special funding to DBH to lead additional crisis intervention training that is open to the public and required for all MPD members. Specifically:

**4 (a) Recommendation:** The Council should require all current MPD officers to successfully complete this training within the next six months, followed by 8 hours of refresher training annually for the duration of their service in the department. Effective immediately, all new recruits should be required to complete the same 40-hour CIT training before graduating from the Police Academy. As recommended by the DC Developmental Disabilities Council, community-based behavioral health professionals and directly impacted community members should deliver this training.<sup>107</sup>

**4 (b) Recommendation:** Training should be accompanied by clear guidance and supervision by MPD, with input from the Department of Behavioral Health, describing circumstances that require a specialized response; directing patrol officers to call for assistance immediately; and specifying what officers may do (and should not do) until those other professionals arrive on the scene.

**4 (c) Recommendation:** In line with recommendations by the DC Jails and Justice Task Force to require any special police officer or member of a DC-funded police force who has authority to carry a weapon or make an arrest to comply with all MPD regulations, such officers should also be required to complete 40 hours of foundational CIT training and eight hours annually of refresher training, beginning immediately.<sup>108</sup>

## Discussion

In the event that officers are part of a co-response or, in carrying out their duties, encounter an individual in crisis, officers must have specialized training on how to engage in a manner that does not cause harm and preserves dignity. All MPD officers must receive training on understanding, recognizing, and responding to individuals with behavioral health disabilities, intellectual and developmental disabilities, substance use issues, and histories of trauma. This training should be designed and delivered by professionals and individuals with disabilities.<sup>109</sup>

According to data provided to the Commission by MPD, 963 officers (25%) have received crisis intervention training.<sup>110</sup> These officers have received 40 hours of training—in addition to the eight hours mandated for all incoming officers—related to behavioral health and substance abuse concepts and symptoms, local resources, local laws, suicide prevention, and de-escalation techniques.<sup>111</sup> These specially trained officers have increased MPD referrals to behavioral health services, which may mean that fewer of our neighbors with special behavioral healthcare needs are experiencing arrest and incarceration.<sup>112</sup> National studies confirm that crisis intervention training results in fewer uses of force; improvements in officer knowledge, attitudes, and self-efficacy related to responding to persons with mental illnesses; and fewer injuries to officers.<sup>113</sup>

MPD's goal is to have several crisis intervention trained officers on duty at any given time, but it is unclear whether that is happening. Community-based behavioral health professionals report that the specially trained MPD officers can be helpful on the scene of a behavioral health crisis—when they are available, which is rare.<sup>114</sup> As MPD scales up

CIO training, they should prioritize service areas with high rates of complaints or offenses which may be linked to mental illness, and areas where they are in frequent contact with the same individuals—“familiar faces.”<sup>115</sup>

**5. Recommendation: Increase the use of pre-arrest diversion. Specifically:**

**5 (a) Recommendation:** With input from the Department of Behavioral Health, community-based behavioral healthcare professionals, and directly impacted residents, the MPD should amend General Order 502.04 to achieve the following: a) expand eligibility for pre-arrest diversion (PAD) and remove disqualifiers; b) expand the program to operate in all Police Service Areas (PSAs); and c) increase the number of officers certified to make PAD decisions. Once there are co-response teams operating districtwide as described in Recommendation 2 above, all of these officers must have authority to divert individuals away from the criminal legal system.

**5 (b) Recommendation:** The above changes in policy must be accompanied by officer training, clear directives, and performance evaluations that emphasize and incentivize the use of pre-arrest diversion.

## **Discussion**

The NEAR Act required DC government to pair MPD officers in teams with mental and behavioral health clinicians and outreach specialists. Instead, MPD, DBH, and DHS piloted a program whereby CIO-trained officers in certain police service areas (PSAs) had discretion (limited by many criteria, some of which appear to negate the intended impact of the program) to divert non-violent, low-level offenders with behavioral health or substance use treatment needs into treatment rather than traditional adjudication. The Pre-Arrest Diversion pilot program (PAD) launched in 2018 and has produced mixed results.<sup>116</sup>

The program enrolled 82 individuals in its first year. As of March 2021, however, the program had not been expanded to serve the entire city. In addition to the delays in scaling up and staffing this key element of the NEAR Act, the pilot program itself raised concerns. Specifically, according to an August 2020 report by the Council for Court Excellence (CCE), the first year of the program suffered from serious problems with officer buy-in; insufficient coordination with external stakeholders; and lack of clear programmatic guidelines on managing referrals, identifying eligible individuals, and logistics involved in diverting eligible individuals to treatment programs.

On the first point, officer buy-in, the CCE report notes that while 69 officers were trained as part of the PAD pilot program, only 25 officers (less than 1% of the force) made any referrals through the program during its first year. Given the small geographic service area, the newness of the program, and the limited hours of operation, it is not surprising that participation was limited; however, CCE interviews with the Department of Behavioral Health suggest that MPD did not dedicate sufficient time to training or to making the case for diversion as a smart, evidence-based approach. This is concerning, as the success of this program depends upon the knowledge and active participation of officers making and carrying out referrals. MPD should provide a clear plan to increase awareness and buy-in around this program, and the Mayor and the Council should continue to monitor officer participation as the program is scaled up.

The second and third concerns outlined in the CCE report relate to MPD’s engagement with external experts and stakeholders in implementing the program. Notably, the report points out that “no non-governmental organizations were involved in the planning, functioning, or evaluation of the program.” This raises serious concerns about the

ability of the program to maintain ongoing awareness of community needs, and its potential to be trusted and viewed as legitimate within the community. The report quotes the LEAD National Support Bureau (LEAD, the Law Enforcement Assisted Diversion program in Washington state, was one of the models for the DC program): “In addition to law enforcement, service providers, community groups, prosecutors, elected officials and others, persons with relevant lived experience are essential stakeholders who should be meaningfully involved partners.” The involvement of stakeholders outside of government will be a critical element if this program is to succeed as it is scaled up, and the City Council, MPD, and DBH should develop a clear process for engaging this broader community in the programmatic guidelines, referral networks, and ongoing oversight of this program.

Further, officers in only five out of 57 PSAs were authorized to make PAD determinations for certain crimes under certain circumstances.<sup>117</sup> Among the eligible crimes were: disorderly conduct, liquor law violations, public consumption of marijuana, possession of a controlled substance, prostitution, theft, and unlawful entry. Diversion was not permitted in cases where the individual was intoxicated, experiencing a mental health crisis, or otherwise unable to consent. Diverting officers are required to handcuff their charges. Individuals most likely to benefit from diversion to treatment and services may be excluded from diversion by the program’s rules. Surely, someone who is incapacitated and unable to give consent would be better served by medical, behavioral health, or substance use treatment than by arrest and jailing. MPD must amend its policies, with guidance from experts and other community members, to ensure that this program has its intended impact and truly serves DC residents.

**6. Recommendation: Adopt an approach to domestic violence 911 calls that relies less on police as sole responders. Specifically:**

**6 (a) Recommendation:** With funding from the Council, the Office of Victim Services and Justice Grants (OVSJG) should expand the number of domestic violence advocates and allied social workers and counselors who can be safely deployed as first responders in lieu of police or, alternatively, as co-responders along with officers in situations where violence is actively unfolding, could quickly escalate, or a weapon is involved.

Implementation of this recommendation must be accompanied by special training for 911 operators and could include establishing a domestic violence command center within the larger 911 call system. This change in practice should be accompanied by a public information campaign to build confidence in a new 911 system among the many domestic violence survivors who have been failed by police in the past, or who are otherwise reluctant to make a call for help that might spark an unhelpful (or worse) response by law enforcement. (See Recommendation 8 below for broader changes to the 911 system.)

**6 (b) Recommendation:** The Council should narrow the legal definition of domestic violence to focus on violence occurring within the scope of an intimate partner relationship. This will ensure that limited resources supporting a specialized and community-based response to domestic violence are used where they are needed most.

**6 (c) Recommendation:** Once a DV co-response model is in effect districtwide, the Council should repeal the mandatory arrest law and replace it with clear guidance that MPD officers should follow, making arrest decisions in consultation with domestic violence advocates on the scene and survivors themselves.

## Discussion

Intimate partner violence is extremely prevalent both nationally and within the District. According to the CDC's most recent survey, based on data collected from 2010-2012, one in four women nationally and 39 percent of women living in DC have experienced violence by an intimate partner at some point in their lives.<sup>118</sup> And these prevalence rates haven't changed in decades, Michelle Garcia, who directs the OVSJG, told the Commission.<sup>119</sup> What has changed is the response to domestic violence.

Demands by largely white-led feminist groups that law enforcement, prosecutors, and judges take domestic violence seriously have caused an over-reliance on police and on arrests in particular. The pitfalls of that approach to personal safety, which women of color predicted, include disempowering survivors, further eroding trust in the "justice" system, funding mass criminalization at the expense of core public services (e.g., health, education, housing, economic support, etc.), and leaving many people vulnerable to continued abuse—fallout that disproportionately harms people of color.

According to survey data collected by the Bureau of Justice Statistics, less than half of domestic violence survivors contact police, and that number is going down, not up.<sup>120</sup> Results of a small-scale survey of women who contacted the National Domestic Violence Hotline echo the national data and suggest how often police fail survivors. Among those who had never called police, four out of five were reluctant to do so in the future; and only one out of five who sought police help in the past felt safer as a result, while one in three felt less safe.<sup>121</sup>

It's not only police that many survivors are reluctant to engage; for some, the system overall feels like a poor solution to their problems. Only half of survivors who contact DC Safe want accountability through the criminal legal system,<sup>122</sup> although some may need to engage the system to receive benefits limited to crime victims (in particular, relief from immigration removal proceedings).<sup>123</sup>

*Responses from the Field*, which mines insights from advocates, service providers, and others who work with survivors of domestic violence, concludes:

"Survivors' goals do not align with those of the criminal justice system or how it operates – A number of responses point to survivors' beliefs that their interests and goals are at odds with those of the criminal justice system or that the criminal process would have deleterious effects on their wellbeing. Three themes emerged in responses of this kind: (1) survivors were looking for options other than punishment for the abuser, options that were not necessarily focused on separation from the abuser; (2) survivors feared that once they were involved in the criminal justice system, they would lose control of the process; and (3) survivors were reluctant to engage the system because they believed that it was complicated, lengthy, and would cause them to suffer more trauma.<sup>124</sup>

The report's several recommendations include more investment in community-based services and closer partnerships between advocates and police. DC should be moving in this direction. With funding from the Council, the OVSJG should expand the number of domestic violence advocates and allied social workers and counselors who can be safely deployed as first responders in lieu of police or, alternatively, as co-responders with officers in situations where violence is actively unfolding, could quickly escalate, or a weapon is involved. Among the many benefits of having a specialized advocate and/or crisis counselor on the scene: Their presence, according to Georgetown Professor Deborah Epstein, reduces the likelihood that officers will resort to force.<sup>125</sup>

Obviously, implementation of this recommendation must be accompanied by changes to the 911 system, which might include establishing a domestic violence command center with specialized operators. Once the changes are in effect, the District will need to take steps to build public confidence in a new emergency response to DV.

This shift should be undertaken carefully and with the benefit of data analysis and field research. While co-response is not a new idea—DC Safe has been working with the MPD in this way for years, but only in a small subset of 911 calls<sup>126</sup>—deploying advocates without police accompanying them is untested, as far as we know. Experienced advocates caution that it can be difficult during a brief 911 call to determine exactly what responders will confront on the scene. Survivors at the greatest risk often downplay the level of danger they're facing, and situations can escalate quickly, especially if an abusive individual who has left returns without warning.<sup>127</sup> Certainly, there are calls that advocates can handle on their own; how many and which ones are questions still to be answered.

To ensure that limited resources supporting a specialized and community-based crisis response to domestic violence survivors are used where they are needed most, the Council should narrow the legal definition of domestic violence to focus on violence occurring within the scope of an intimate partner relationship, with accompanying training for 911 operators. The current law encompasses violence that occurs among anyone sharing the same household. Domestic violence advocates told the Commission they have been called to respond to situations involving nothing more than siblings fighting over a piece of pizza.<sup>128</sup>

The District should also narrow the circumstances that trigger arrest. Beginning in the mid-1980s, mandatory arrest policies swept the country. While early data (one study in particular<sup>129</sup>) suggested that arrest was an effective way to deter future DV abuse, three decades of intensive research show the limited utility of arrest in DV cases. One study even found that mandatory arrest policies were correlated with an *increase* in levels of intimate partner homicide, perhaps resulting from reprisals by abusers and/or reduced reporting by survivors who don't want their abuser arrested.<sup>130</sup> Most recently, a meta-analysis examining 11 prior studies concluded that arrest has no significant deterrent effect on the behavior of abusive individuals and in some of the studies increased the risk of re-offending.<sup>131</sup>

We concur with Georgetown Professor Deborah Epstein that the next generation of domestic violence laws and policies should limit the use of arrest, instead of requiring arrest in every case. The co-response model we recommend will facilitate this change. Once a co-response is widely in effect, the Council should repeal the District's mandatory arrest law and replace it with clear guidance that MPD officers should follow, making decisions about arrest in consultation with advocates on the scene and survivors themselves.

**7. Recommendation: Expand crisis intervention and services for survivors of sex trafficking and ensure that police can be a gateway to help rather than a pathway to jail. Specifically:**

**7 (a) Recommendation:** The Council should fund the Office of Victim Services and Justice Grants to expand community-based 24-hour crisis responders with links to emergency shelter for survivors of sex trafficking. Funds should go first to experienced service providers currently working with trafficked youth and adults. Implementation of this recommendation must be accompanied by changes to the 911 system, including special training for dispatchers so that they can redirect calls to community-based advocates or deploy advocates along with police. (See Recommendation 8 below for broader changes to the 911 system.)

**7(b) Recommendation:** The MPD and external oversight bodies must hold police officers accountable for fulfilling their duty under the law to refer trafficked youth to specialized service providers. In addition, the Council should amend this portion of the law (DC Code Sec. 22-2701(d)) to cover a person *of any age*, not just those under age 18—who discloses they are or were a victim of sex trafficking.

For this policy to work in practice, every MPD officer must receive training in the signs and underlying dynamics of sex trafficking. That effort should begin now, building on the limited training that has occurred to date. Training must be carried out by those who work with trafficked youth and adults and must include hearing directly from survivors.

**7 (c) Recommendation:** To build trust in law enforcement as a possible gateway to help, rather than a pathway to jail, the MPD should immediately adopt policies that: a) strongly discourage arresting or citing a potentially trafficked youth for any offense without first conferring with a specialized advocate, unless that individual poses a danger to others; and b) strongly discourage arresting or citing adults for the sale of sex (i.e., solicitation). These changes in policy must be accompanied by clear directives to officers, internal performance evaluations and incentives that encourage officers to comply with the policies, and active external oversight.

## Discussion

When people think of sex trafficking, if they do at all, they are likely to imagine international syndicates smuggling girls and young women across borders. The reality in DC is far different. The overwhelming majority of survivors are youth of color (including some boys) for whom DC is home,<sup>132</sup> and one out of three are trafficked by family members, evidence suggests.<sup>133</sup> The Commission heard about one mother who taught her 11-year-old daughter the “family business.”<sup>134</sup>

The same systems that are failing youth of color in DC more broadly, including a police-centric approach to personal safety, are failing sexually exploited young people. Not only are they forced to engage in unwanted sex, which is inherently traumatizing,<sup>135</sup> they are also at high risk of experiencing emotional abuse and violent assault by traffickers, pimps, and the predominantly white men who purchase sex.<sup>136</sup> In a sample of 100 women in the sex trade: 80 percent reported being threatened with a weapon, 61 percent reported being physically assaulted, and 44 percent had been raped, with 60 percent of rapes committed by customers.<sup>137</sup>

Specialized community-based organizations provide a lifeline to trafficked youth and young adults but reach only a fraction of those in need. Tina Frundt, a Black woman survivor of sex trafficking and member of this Commission, runs Courtney’s House. Operating 24/7, Courtney’s House provides crisis intervention, emergency shelter, and a range of healing and life transition services to girls and boys ages 11 to 24. In late January, Courtney’s House had a waiting list of 46 people.<sup>138</sup>

No one experiencing sexual exploitation should be on a waiting list. The Council should fund the Office of Victim Services and Justice Grants to expand community-based, 24-hour crisis responders with links to emergency shelter—and funds should go first to experienced service providers such as Courtney’s House. This investment should be accompanied by changes to the 911 system: protocols for deploying specialized community-based crisis responders in lieu of police or along with police; training for operators to achieve this goal; the addition of sex trafficking and suspected sex trafficking as call categories; and a public information campaign to build confidence in a new emergency response system among trafficked youth who are unlikely to trust the police.

Changes within the MPD are needed as well. Although many sexually exploited youth and young adults will not seek help from police, officers routinely encounter them, as do many other professionals (teachers, ER physicians, child protective services investigators, et al.), often without noticing or fully understanding their circumstances. If these adults knew what to look for and were paying attention, they could see the signs, one anti-trafficking advocate told the Commission, pointing to the success of training flight attendants to help disrupt international human trafficking.<sup>139</sup>

Given this Commission’s mandate, our recommendation focuses on enhanced training for police. All MPD officers, both patrol and investigators, need education and routine refresher training on the dynamics of sex trafficking, how it affects young people, and common warning signs. This effort should begin immediately, building on the limited training that has occurred to date. Training must be carried out by those who work with trafficked individuals and include hearing directly from survivors themselves.

Once informed, officers must be held accountable for taking appropriate action—investigating suspected cases of trafficking and fulfilling their duty under the law (DC Code Sec. 22-2701(d)) to connect youth with specialized service providers.<sup>140</sup> Officers made 44 such referrals in 2020 to Courtney’s House, FAIR Girls, and the Latin American Youth Center,<sup>141</sup> just the tip of the proverbial iceberg, according to Tina Frundt. Given the continuum between child sex trafficking and adult prostitution, in which many adults involved in the sex trade were coerced into sex work as minors, the Council should amend the law to apply to a person *of any age*—not just minors—who discloses they are or were sex trafficked.

Police officers need to make arrest a genuine last resort. Although the District has a “safe harbor” law<sup>142</sup> protecting trafficked minors from being arrested and prosecuted for solicitation, youth often are arrested for behaviors stemming from their exploitation—mostly the kinds of disruptive and delinquent behavior for which all youth of color are over-criminalized. These arrests must end. In Section VI of this report, we recommend decriminalizing status offenses. Police also must understand that even more serious criminal behavior can be the result of threats and manipulation. A trafficker or pimp can make a young person do just about anything, Tina Frundt explained. She gave the example of a 14-year-old girl who robbed a “client.” “The police wanted to arrest her, when they should have gone after the guy who trafficked her.”<sup>143</sup>

Once a person turns 18, the safe harbor law no longer applies, so someone who was trafficked as a minor can then be arrested as an adult for prostitution. DC’s criminal code identifies both the sale of sex and the purchase of sex as “solicitation,” so it’s impossible to know what proportion of arrests are of sellers versus buyers; but research from other jurisdictions suggests that the legal system is biased, punishing sellers far more often than buyers.<sup>144</sup> Young women between the ages 18 to 24 describe a lack of compassion from police, despite the fact that many of them were forced into the sex trade in early adolescence and have no clear exit path. Even those who freely choose sex work often do so in the context of a scarcity of jobs; Black trans sex workers have made this point explicitly.<sup>145</sup> Trafficked individuals and sex workers also describe humiliation, harassment, and sometimes sexual abuse by officers.<sup>146</sup>

None of these dynamics are acceptable. The MPD and external oversight agencies must hold MPD officers accountable for treating everyone with dignity and respect. Evidence of harassment should be met with internal discipline—or more severe penalties if there is a pattern of harassment—and acts of physical abuse or sexual assault should be prosecuted to the full extent of the law. (See Section VII of this report for our recommendations to strengthen internal accountability mechanisms and external oversight.)

To ensure that the MPD as a publicly funded agency can be a gateway to help for sexually exploited youth and young adults, rather than a pathway to jail, the department should immediately adopt a policy that strongly discourages officers from arresting or citing a potentially trafficked youth for any offense without first conferring with a specialized advocate, unless the individual poses a clear and immediate danger to others. Similarly, the MPD should strongly discourage officers from arresting or citing adults for the sale of sex. These changes in policy must be accompanied by clear directives to officers, internal performance evaluations and incentives that encourage compliance, and active external oversight.

**8. Recommendation: Re-engineer and enhance the Office of Unified Communications (OUC) to be able to deploy a more diverse array of emergency responders, relying less on police. Specifically:**

**8 (a) Recommendation:** The Mayor should immediately direct the OUC to begin a thorough assessment of the changes in staffing, training, and technology that will be needed to effectively deploy a more diverse array of first responders as outlined in our recommendations above. This analysis, which should be completed within six months, should persuade the Council to provide additional funding for OUC to change internally in tandem with the rollout of new first responders.

**8 (b) Recommendation:** In the meantime, OUC must ensure that all 911 operators receive 40 hours of crisis intervention training. To facilitate this, the Council should provide special funding to DBH to provide additional crisis intervention training which is open to the public and required for all 911 operators (see Recommendation 4 above).

**8 (c) Recommendation:** The Council should provide special funding to OUC to add dispatch options including:

**8 (c) (i)** Direct transfers to non-police crisis response teams or co-response teams.

**8 (c) (ii)** Direct transfers to DBH’s Access HelpLine or a new triage line staffed by behavioral healthcare professionals able to provide over-the-phone counseling and to route calls to non-police crisis response teams or co-response teams.

**8 (d):** Once the District has a more nuanced and nimble 911 system in place and with funding from the Council, OUC should launch a public information campaign to build awareness of and confidence in a more effective 911 system, particularly among residents who have been failed in the past by an ineffective or harmful response by police.

## **Discussion**

The 911 system is a critical lever in connecting residents to behavioral healthcare and other non-police services. Rachael Gass, a commissioner on the DC Commission on Persons with Disabilities, reflected that DC residents have been trained to call 911 for every perceived disturbance. This includes encounters with their neighbors who may be in crisis or exhibiting behavior different from what they perceive as “normal,” even if harmless. This is only a problem when 911 operators do not have the tools or knowledge to connect those callers to the appropriate professionals. Commissioner Gass expressed concerns that even if the District expands options for non-police

responders, absent changes to 911 operator training and dispatch, those non-police responders may not reach residents in need.<sup>147</sup>

DBH Chief of Staff Phyllis Jones reported that DC residents can reach DBH for emergency assistance through several numbers, including 911, 311, DBH's Access HelpLine, and the CRT hotline, yet residents still ask her, "How do we access your services?" That residents ask that question is not surprising. The Office of Unified Communications (OUC) website instructs DC residents to call 911 "to request services from the Metropolitan Police Department (MPD) and DC Fire and Emergency Medical Services Department (FEMS)." As far as most residents know, 911 operators have only two options in all cases regardless of the caller's needs: the MPD or FEMS.<sup>148</sup>

In 2018, OUC implemented the Right Care, Right Now Initiative. This program added a nurse triage line to 911 dispatch to screen calls that would normally trigger an FEMS response. Nurses on the triage line assess the severity of the call and can direct minor injuries or issues to community healthcare instead of sending FEMS. Many in the District have called for expanding this program to include behavioral health-related calls.<sup>149</sup>

Community behavioral healthcare providers say that by and large, 911 operators do dispatch MPD officers rather than behavioral health professionals to calls involving a person experiencing a behavioral health crisis, a person struggling with a substance use disorder, or a person experiencing homelessness. For these reasons, Jean Harris, president of DC's chapter of the National Alliance on Mental Illness (NAMI DC), shared with the Commission that she counsels her clients and their caretakers against calling 911 in a behavioral health crisis. She advises families to call organizations like hers, that have relationships with them and understand their needs.<sup>150</sup>

The 911 system is the gateway to much of the law enforcement contact with DC residents. Operators must be able to distinguish between calls requiring law enforcement and those requiring an alternative response. In its 2019 recommendations on District crisis intervention, the DC Police Complaints Board called for increased and improved training for 911 dispatchers in line with national best practices.<sup>151</sup>

### *Public Education and Awareness*

The proposed changes to DC's emergency response system require a robust campaign to educate the DC public on recognizing the signs of a behavioral health crisis; recognizing behaviors related to a developmental disability; and the appropriate agencies and numbers to secure help for people with developmental disabilities and people experiencing behavioral health crises. Representatives from Community Connections, a DC-based nonprofit providing behavioral health, residential services, and primary healthcare coordination, recommends training for families and community members. This re-education can be achieved through public service announcements, advertisements on city buses and bus stations, and through in-school programming. The more we can empower DC residents to correctly use 911, the sooner appropriate crisis responses can be dispatched to the scene.

# Section II: Strengthening the Safety Net and Decriminalizing Poverty

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## OVERVIEW

For far too many DC residents, life is lived from one crisis to the next. The first section of this report calls on the District to develop a more diverse array of emergency first responders, so that police are not handling situations that require an entirely different skill set. In this section, we call for the expansion or creation of services and community resources to meet people's underlying needs, enable them to thrive, and thus prevent many emergencies from arising in the first place.

Strengthening the safety net is crucial in historically marginalized, under-resourced communities, which in DC are populated mainly by Black residents and other people of color. These same communities are subject to over-policing and criminalization. Efforts to better support residents must be accompanied by a far less punitive approach to low-level offenses that are driven primarily by structural racism, intergenerational poverty, and a deficit of resources, and in which treatment, counseling, and/or shelter are far more appropriate responses than arrest and prosecution.

Essential threads of a strong social safety net that we address in this section are culturally competent and easily accessible mental healthcare; treatment for people struggling with substance use disorders; stable and affordable housing; and new models of community support and restorative justice.

Strengthening the safety net in these ways begins with making direct investments in community-based organizations already doing this work. Organizations such as the DC Chapter of the National Alliance on Mental Illness (NAMI DC), Community Connections, Helping Individual People Survive (HIPS), and Pathways to Housing, and many others, respond directly to people's needs and provide services essential to fostering community safety and health. There must be a concerted effort to assess the quality of existing social programs and services, expand those that are working well, and develop new programs where a need exists. Innovation is especially needed to better support residents who are vulnerable in part because they are isolated, including some individuals experiencing domestic violence and many youth leaving foster care.

This work must occur in partnership with community-based service providers and advocates. Too many well-intentioned and even well-designed programs have launched in DC without this thought partnership and have floundered as a result. Government must listen to communities to understand their needs and learn how best to

address those needs. Expansion of community-based programs and allied government services and initiatives must be accompanied by public education to ensure that residents and visitors are well aware of the services and support available to them.

While the recommendations below identify urgent unmet needs, the list is not comprehensive. Individuals, families, and whole communities need a wide array of resources and support to thrive. The Commission's limited resources, time in particular, permitted us to explore just a few of these issues. We urge the Council and others to consider other equally important issues, ranging from food deserts, to rising healthcare costs, to lack of childcare.

## Recommendations

1. **Recommendation:** With funding from the Council, and support of the Mayor, the Department of Behavioral Health (DBH) must increase investments in evidence-based, culturally competent behavioral health and wellness services to meet the current and anticipated needs of all District residents. Specifically:

**1(a) Recommendation:** The Council must increase funding for behavioral health services to meet the current and anticipated needs of all District residents by expanding the number of crisis beds available across the District, increasing the number of clinicians in public schools,<sup>152</sup> expanding the capacity of Assertive Community Treatment teams, and improving the training MPD officers receive regarding how to interact with individuals experiencing a behavioral health crisis.<sup>153</sup> Agencies should also receive additional funding and resources to recruit and retain highly skilled providers in order to provide stable case management for clients.

**1(b) Recommendation:** The Commission supports the following data collection and data sharing recommendations from the DC Justice Lab, the Council for Court Excellence, and the District Task Force on Jails & Justice to improve the District's treatment services for people with substance use disorders (SUDs); we also encourage these agencies to adopt similar practices for people with mental illnesses and developmental disabilities:

**1(b)(i):** MPD and DBH should collaborate to reduce the number of people who are classified as "familiar faces" due to repeat arrests, by developing and concentrating behavioral services and specialized training in the most-affected Police Service Areas.

"Familiar faces" or "super-utilizers" are individuals who have higher than average contacts with criminal justice and social service agencies. Since these individuals are constantly interacting with the same agencies—MPD, DBH, and DOC—proper data collection and sharing will allow service providers to match them appropriately with healthcare, shelter, or other social service providers, and develop strategies for addressing their needs more durably.<sup>154</sup>

**1(b)(ii):** DC should establish an inter-agency agreement to facilitate data sharing between all agencies that regularly come into contact with justice-involved SUD consumers. The agreement should create a process for agencies, on an ongoing and permanent basis, to combine their person-level data into a single anonymized dataset that includes all variables relevant to a person's behavioral health needs, service consumption, and justice involvement in the District of Columbia.

**1(b)(iii):** The Deputy Mayor for Health and Human Services (DMHHS) and the Deputy Mayor for Public Safety and Justice (DMPSJ) should collaborate to identify the appropriate entity, with adequate staffing and expertise, to manage this data sharing on an ongoing basis, ensure compliance from all participating DC agencies, and analyze the dataset.

**1(b)(iv):** The District should publish an annual report summarizing the inter-agency dataset analyzed about SUDs and justice system involvement, including any indicators of emerging barriers to care or significant population trends.

**1(c) Recommendation:** DBH should improve community care for individuals with SUDs to reduce the harms associated with substance misuse, increase opportunities for treatment, and alleviate the need for a police/criminal legal system response.

**1(c)(i):** In addition to increasing distribution of the life-saving overdose antidote, Naloxone, DBH should improve access to medications that curb opioid cravings; connect individuals held in DC jail to drug treatment; and improve access to low- or no-cost treatment in communities.

**1(c)(ii):** The Commission supports the following recommendations from the Council for Court Excellence to DBH to increase access to its SUD services:

Revise D.C.M.R Chapter 22-A (“Mental Health”) to allow any SUD provider to conduct assessments and referrals; amend D.C.M.R Chapter 22-A to remove the requirement that initial SUD assessments be conducted in person; and expand days and hours of access for the initial assessments, ensuring that at least one SUD provider is open 24 hours a day, seven days a week to assess and accept clients into each level of care and to serve individuals who are in acute withdrawal.

DBH should track the time between referrals and care initiation in the new “no wrong door” system, and set goals to decrease any wait times, particularly for people with SUDs suffering withdrawal.

DBH should minimize the time between identification of a treatment need and initiation of care by significantly expanding screening, brief intervention, and referral to treatment (SBIRT) referrals into broader community settings, and developing programs integrating behavioral health and primary care to foster close collaboration between care teams in a co-located setting.

**1(d) Recommendation:** The Council should establish a task force or coalition of providers and public officials to assess the adequacy of preventative community behavioral health and wellness programs, on an annual basis.

**1(e) Recommendation:** The increased funding should also include a public information campaign to educate residents on the programs and services available to them through government agencies and community-based organizations.

## Discussion

To ensure the safety and well-being of District residents, the District must make meaningful investments in behavioral healthcare, substance use disorder (SUD) treatment, and preventative health and wellness programs. Research demonstrates that investing in community-based behavioral health and SUD services reduces crime rates, law enforcement contact, and incarceration, and saves money.<sup>155</sup> Despite this evidence, the District cut funding to DBH by 4.7% from FY 2020 to FY 2021, and DBH's 2021 operating budget is only 56% of the size of MPD's budget.<sup>156</sup> Echoing the calls of the District Task Force on Jails & Justice and the Defund MPD Coalition,<sup>157</sup> the Commission recommends that the District reverse these trends and make the much-needed investments described below to promote the safety and health of all residents.

When allocating these increased resources, the District should specifically target for investment behavioral healthcare and SUD treatment programs that are evidence-based and culturally competent. Evidence-based practice involves “integrating individual clinical expertise with the best available external clinical evidence from systematic research.”<sup>158</sup> The Substance Abuse and Mental Health Services Administration (SAMHSA)'s Evidence-Based Practices Resource Center provides practitioners and policymakers with information on evidence-based programs, such as cognitive behavioral therapy (CBT) and medication-assisted treatment (MAT).<sup>159</sup>

Ensuring that behavioral health interventions are supported by robust scientific evidence is necessary but not sufficient. To adequately serve the District's most vulnerable populations, care must also be culturally competent. Much of the existing literature in clinical psychology does not include study participants who are people of color, so it should not be assumed that evidence-based practices will necessarily benefit all community members equally.<sup>160</sup> In fact, “[o]ur culture, beliefs, sexual identity, values, race and language all affect how [individuals] perceive and experience mental health conditions,” and “cultural differences can influence what treatments, coping mechanisms and supports work for us.”<sup>161</sup> Research demonstrates that “when a mental health professional understands the role that cultural differences play in the diagnosis of a condition, and incorporates cultural needs and differences into a person's case, it significantly improves outcomes.”<sup>162</sup> Therefore, to overcome racial and ethnic disparities in behavioral healthcare, increase accessibility, and improve outcomes, the District must prioritize investments in culturally competent care for its residents.

For far too many DC residents, life is lived from one crisis to the next. ... Strengthening the safety net is crucial in historically marginalized, under-resourced communities, which in DC are populated mainly by Black residents and other people of color. These same communities are subject to over-policing and criminalization.

### *Increase the Number of Clinicians in DC Schools*

Increasing the number of clinicians in local schools is another key step in strengthening the District's behavioral health services. As described in Section III, the Council should reallocate resources from the MPD School Safety Division (which the Commission recommends eliminating) to services that include school-based mental health professionals, to ensure that DC schools no longer fall short of national standards for staffing of school counselors, psychologists, and social workers. Echoing the District Task Force on Jails & Justice, as well as the many District

residents and 45 local organizations who have asked the Council and the Mayor to expand access to behavioral health services for youth, the Commission urges the District to make these key investments in order to develop safe and nurturing school environments and promote the behavioral health and wellbeing of young people.<sup>163</sup>

### *Invest in Assertive Community Treatment*

The District should also make investments to expand the capacity of assertive community treatment (ACT) teams. ACT teams “work with severely mentally ill patients to ensure continuity of care from a hospital to an outpatient practice, improve patients’ ability to function in the community, and reduce the need for future hospitalization,” and are considered “one of the most effective programs for patients with chronic mental illness.”<sup>164</sup> In the District, DBH “utilize[s] ACT services to support adult consumers with serious and persistent mental illness who meet the ACT eligibility criteria.”<sup>165</sup> A number of local community organizations operate ACT teams in the District, including Community Connections, Pathways to Housing, Hillcrest Children & Family Center, MBI, Family Preservation Services, Catholic Charities, Amazing Love, Prestige, Life Care, and City Care.<sup>166</sup> Research demonstrates that “[p]atients who enter the [ACT] program are more likely to find housing and less likely to be jailed,” and that patients “usually claim to be more satisfied with ACT than with other forms of community treatment.”<sup>167</sup> Furthermore, ACT teams can be developed to effectively serve “individuals from ethnic minority groups who have serious and persistent mental illnesses, a sector of the already marginalized population who are traditionally unable to obtain services because of linguistic and cultural barriers.”<sup>168</sup> Given the demonstrated effectiveness of this evidence-based practice and the promise it offers in providing services to residents who are otherwise especially vulnerable to requiring emergency interventions, the Commission urges the District to increase funding to ACT teams.

By increasing investments in the services described above and in Section I of this report, the District can make strides toward preventing individuals from experiencing behavioral health crises in the first place; and when crises do arise, the District can ensure that individuals receive appropriate care and support. In the near term, however, there will remain instances in which MPD officers respond to situations involving community members in crisis. This reality requires that the District also improve the training that MPD officers receive on interacting with individuals who are experiencing a behavioral health crisis. As described in Section I, the District must evaluate and scale up crisis intervention training (CIT), requiring all MPD officers and special police officers who have the authority to carry a weapon or make an arrest to complete 40 hours of CIT, accompanied by clear guidance and supervision by MPD, with input from DBH, regarding circumstances that require a specialized response.

### *Improving Data Sharing*

Establishing processes for collaboration and data integration across agencies is crucial for improving the coordination of care for individuals who interact regularly with public agencies and law enforcement. Once an individual arrives at a local hospital or community-based service, providers—those that are able to review a file of their behavioral health history and a record of other agencies that have served them—will be able to consult with necessary case managers and make informed decisions about treatment and stabilization procedures. Due to the barriers in place to protect the confidentiality of SUDs and mental health history, the Council of Court Excellence (CCE) proposes an ethical way to overcome these provisions: by allowing individuals to sign consent waivers that would inform agencies of their history of substance use.<sup>169</sup> The Commission encourages the Council to explore the CCE proposal in depth and consider ways to protect clients’ personal information while also providing agencies with the detail needed to provide the best care and coordination of support services for the individual and their family. In its analysis, the Council should also consider the data coordination models described by the Police Complaints

Board.<sup>170</sup> For example, the data sharing model used by California’s Ventura County Police Department mandates that officers track interactions with individuals experiencing a behavioral health crisis. This data is maintained internally and used to prepare officers for potential symptoms and behaviors to anticipate. Specifically, the data include information on an individual’s “family, friends, and contact information; de-escalation techniques used; and prior calls for service.”<sup>171</sup>

Essential threads of a strong social safety net...are culturally competent and easily accessible mental healthcare, treatment for people struggling with substance use disorders, stable and affordable housing, and new models of community support and restorative justice.

### *Improving Community Care for Individuals with SUDs*

The District must act promptly to improve community care for individuals with substance use disorders (SUDs).<sup>172</sup> A 2017-2019 SAMHSA survey found that 13.4 percent of people in DC aged 12 or older had an SUD in the past year, a prevalence rate nearly double the regional and national averages.<sup>173</sup> Furthermore, in 2020, opioid overdose deaths in the District reached a seven-year high, mirroring national trends attributed to the COVID-19 pandemic.<sup>174</sup> This alarming increase in overdoses has disproportionately impacted Black people, who comprised 84 percent of all deaths in DC due to opioid use from 2016 to 2020.<sup>175</sup> There were also geographic disparities in overdose deaths, with fatal overdoses over the same four-year period most prevalent in Wards 5, 7, and 8 – which have high poverty rates and are disproportionately populated by people of color.<sup>176</sup>

In addition to the risk of a fatal overdose, SUDs carry other associated harms. Although reported rates of neonatal abstinence syndrome/neonatal opioid withdrawal syndrome in the District are far lower than national rates,<sup>177</sup> the acquisition of infectious diseases from drug misuse is a significant problem. A 2017 CDC estimate found that 16.6% of HIV cases in men in the District, and 15.5% of cases in women were partially or wholly attributed to injection drug use.<sup>178</sup> Additionally, while District-level data is unavailable, a 2017 national estimate indicated injection drug use was prevalent in 86.6% of people prior to the onset of acute, symptomatic Hepatitis C.<sup>179</sup> Finally, because of the District’s current response pathways, people with SUDs are at increased risk of becoming entangled in the criminal justice system; in one study, 40 percent of records evaluated by the CCE indicated that an individual incarcerated in DC had a substance use disorder.<sup>180</sup>

To reduce these harms, the Commission recommends that DBH make more accessible the medications and treatment options that have been proven successful in addressing overdose and addiction. The Commission applauds DC Health’s recent efforts to double the availability of the life-saving opioid overdose antidote Naloxone, expand access to free Naloxone kits to 35 locations in every ward, and introduce a text service for people in need to receive information about Naloxone distribution locations.<sup>181</sup> We recommend that the District continue to expand Naloxone access to meet the current elevated level of need, focusing particularly on geographic areas that are experiencing disproportionate overdose death rates.

To further prevent overdoses and address SUDs, the District should also improve access to medication-assisted treatment (MAT). By pairing medications that curb opioid cravings with counseling and behavioral therapies, MAT

has been proven to successfully treat SUDs, sustain recovery, and prevent or reduce opioid overdose, as well as lower a person's risk of contracting HIV or hepatitis C.<sup>182</sup> The CCE and DBH have found that local "Opioid Treatment Program (OTP) facilities, clinics that provide MAT services, had likely been operating at maximum capacity since 2012, before the onset of the opioid crisis."<sup>183</sup> For this reason, the Commission recommends that DBH expand access to MAT, especially in light of the significantly increased level of need over the past year.<sup>184</sup>

The District must also work to connect individuals held in DC jail to SUD treatment. As previously discussed, incarcerated people in the District disproportionately experience SUDs. According to the CCE, the fact that a high number of justice-involved people have a diagnosed SUD:

...compounds the impacts of this public health crisis, further burdening public resources, degrading community safety, and leading to collateral consequences that can make recovery even more difficult. At the same time, an encounter or involvement with the criminal justice system can present the opportunity to connect with and help an individual who may be struggling to get SUD treatment and other needed supports.<sup>185</sup>

In 2020, the CCE authored a report for the Office of the DC Auditor, analyzing SUD services and incarceration data from DC agencies. The report found that the DC Department of Corrections (DOC) "is a leader in the delivery of medication-assisted treatment in a correctional setting, but needs to improve the availability of other types of substance use disorder services, reentry planning, and Medicaid reconnection supports for people leaving custody."<sup>186</sup>

Specifically, based on their research, CCE recommended that DOC make improvements to care for individuals with SUDs by: offering SUD-related group and individual therapeutic programming; making "brief interventions" that can help individuals with SUDs (even those incarcerated for short periods of time) change their behaviors; determining the minimum length of incarceration needed to provide effective treatment to individuals with active SUDs; prioritizing reentry planning and data collection for people with active SUDs; implementing the Uniform Consent Form for people with active SUDs; and working with the Department of Health Care Finance (DHCF) to establish annual goals and relevant procedures to ensure prompt Medicaid coverage for individuals leaving DOC.<sup>187</sup>

The CCE report also recommended that DOC improve its ability to identify incarcerated individuals with active SUDs, as currently, "DOC is failing to identify all individuals with substance use disorders who may benefit from treatment while in custody or connection to care during reentry."<sup>188</sup> The Commission supports these recommendations, as we believe that the District must do more to connect justice-involved individuals to SUD treatment in order to curb rising rates of substance use in the District. Successful implementation of these recommendations is also likely to reduce the justice-involved population in the long term by supporting the 40% of people leaving DOC custody who currently report that SUDs are a barrier to their reentry into society.<sup>189</sup>

If implemented, these near-term changes can help ensure that SUD treatment is accessible to justice-involved people who need it. However, the District must also work to decouple substance use treatment access from the criminal justice system by ensuring that residents can access low- or no-cost treatment in local communities, not just within the jail. Between 2015 and 2018, an estimated 16,000 to 24,000 adults in the District who needed treatment for illicit drug use did not receive it.<sup>190</sup>

Nationally in 2017, among individuals aged 12 or older who needed but did not receive SUD treatment, 30.3 percent did not receive treatment because they had no healthcare coverage and could not afford the cost of treatment;

another 10.5 percent did not receive treatment even though they had healthcare coverage, because their health insurance did not cover treatment or the full cost of treatment.<sup>191</sup> Medicaid expansion has lowered the financial barrier to treatment in recent years (notably, DC is one of only 32 states and territories that provides Medicaid coverage of all three forms of medication to treat OUD); nonetheless, financial barriers sometimes remain.<sup>192</sup>

The Council and Mayor should fund—and DBH should establish—low- or no-cost community-based SUD treatment services to meet the current need in the District and ensure that all residents can easily and quickly access SUD treatment services that are appropriate to meet their needs and compatible with their life, regardless of their income or insurance status. Any financial investments that the District makes to achieve this goal are almost certain to be worthwhile, as “treatment in the community costs taxpayers less than judicial proceedings and incarceration,” as well as the emergency room visits and hospitalizations that often result from untreated SUDs.<sup>193</sup> In fact, research has shown that every dollar spent on SUD treatment saves four dollars in other healthcare costs and seven dollars in criminal justice costs.<sup>194</sup>

To increase the accessibility of SUD services, the District must adopt a “no wrong door” model for accessing care. Currently, there are only a few community-based entry points into the District’s public SUD service system; residents must present at the Assessment and Referral Center (ARC) or one of six community-based SUD providers to undergo an initial assessment before being referred to an appropriate SUD provider for services.<sup>195</sup> Additionally, unlike mental health assessments, which are accessible through DBH’s 24-hour Access HelpLine, “SUD initial assessments must be done in-person at limited locations.”<sup>196</sup> These limited entry points into SUD care pose problems for District residents in need, and clients and providers have reported that “the limited options for getting assessed for care” and “the lag time between seeking and starting treatment” are both challenges to accessing community-based care.<sup>197</sup>

To remedy this issue, the District should continue to work toward a “no wrong door” model of care in which “the healthcare delivery system, and each provider in it, has a responsibility to address the range of client needs wherever and whenever a client presents for care.”<sup>198</sup> SAMHSA has encouraged this model for over 20 years, and it is supported by both DBH administrators and local SUD providers.<sup>199</sup> Specifically, the Commission supports the CCE’s recommendations that the DC Council revise D.C.M.R. Chapter 22-A to allow any SUD provider to conduct assessments and referrals; amend D.C.M.R. Chapter 22-A to remove the requirement that initial SUD assessments be conducted in person; and expand the days and hours of access for initial SUD assessments, ensuring that at least one SUD provider is open 24 hours a day, seven days a week to assess and accept clients into each level of care and to serve clients in acute withdrawal.<sup>200</sup>

To ensure that these changes are accompanied by robust data collection and performance management, the Commission echoes the CCE’s recommendation that DBH track the time between referrals and care initiation in the new “no wrong door” system, and set goals to decrease wait times, particularly for people with SUDs suffering withdrawal.<sup>201</sup> Lastly, DBH should minimize the time between identification of a treatment need and initiation of care by significantly expanding SBIRT referrals into broader community settings and developing programs that integrate behavioral health and primary care to foster close collaboration between care teams in a co-located setting.<sup>202</sup> By implementing these changes, the District will reduce arrest and incarceration rates and save lives by lowering the risk of a fatal overdose.<sup>203</sup>

### *Educating Residents and Assessing the Adequacy of Preventative Behavioral Health and Wellness Programs*

As the District scales up its behavioral health efforts, it must also periodically take stock of public health and wellness offerings in order to make informed investments. This effort must involve not only those with the power to make change by virtue of holding public office, but also those with a deep working knowledge of the day-to-day operations of the behavioral health system. Specifically, the Commission recommends that the Council establish a task force or coalition of providers and public officials to assess the adequacy of preventative community behavioral health and wellness programs, on an annual basis. The Council's proposed Interagency Council on Behavioral Health Establishment Amendment Act of 2021 would be one way to satisfy this recommendation; as introduced, it would serve the purpose of:

...facilitating interagency, cabinet-level leadership in planning, policymaking, program development, and budgeting for a culturally competent, out-come based, behavioral health system of care, to include prevention, harm reduction, treatment, and recovery support services related to mental health disorders, addictions, and the misuse of alcohol, tobacco, and other drugs in the District.<sup>204</sup>

We recommend that the Council pass this bill or similar legislation, containing provisions for agency heads and other public officials, services providers, and other key stakeholders to come together to assess and guide local behavioral health efforts, charting a course for data-driven, continuous improvements that meet the needs of all District residents.

Lastly, just as the District must harness the expertise of community partners to inform its behavioral health investments, it must also inform community members about the resources available to them. The CCE reports that “[d]uring the [Council’s] Audit Period—which coincided with the peak of the opioid crisis—members of the public, including individuals with SUDs and professionals working in the field, struggled to find information about the SUD services available in DC”<sup>205</sup> The CCE found that “[a]ccording to many clients, when they decided to seek care it was difficult for them to learn about available SUD services in the District,” and that “[a] common frustration articulated by clients, SUD providers, and administrators at other DC and federal agencies who interact with individuals with SUDs, was the absence of a public, accurate, and complete list of SUD providers in the District.”<sup>206</sup> Tangible changes that DBH could make to improve communication with the public, specifically with regards to SUD services, include: maintaining its public list of SUD providers and updating it as providers are certified and decertified; improving its website to increase usability for SUD clients, SUD providers, individuals involved in the justice system, and the public; and training all outward-facing staff on connecting the public to its resources.<sup>207</sup>

Similarly, DBH should work to ensure that its web pages regarding community-based behavioral health service providers are easily navigable and regularly updated. DBH has made laudable investments to help community members access the care they need, from the 24-hour Access HelpLine to the expanded availability of Narcan; however, these resources are only useful insofar as the public is aware that they exist. The Commission thus recommends that increased funding to DBH also support a public information campaign to educate residents on the programs and services available to them from the District’s various government agencies and community-based organizations.

2. **Recommendation:** The Council must prioritize addressing DC’s housing and homelessness crises by continuing to invest in pathways to safe and permanent housing and improving existing programs supporting community members experiencing homelessness.<sup>208</sup> Specifically:

**2(a) Recommendation:** The DC Department of Human Services (DHS) and DBH must partner to determine a necessary number of temporary housing units specifically available for residents discharged from treatment facilities. The development of this infrastructure must happen in conjunction with the development of a pathway to permanent housing, specifically for this population.

**2(a)(i) Recommendation:** With consent of the individuals and adults in each family unit, by-name lists should be created, updated, and shared with other care providers, including day centers and community-based health providers like Mary’s House and Bread for the City. These lists should be used to construct a database to strengthen coordination across service providers.

**2(b) Recommendation:** DHS must increase funding to all emergency homeless shelters and transitional housing facilities to guarantee that both mental health counselling and SUDs counselling are available to all adults and children in their care in order to combat the physiological effects of trauma and sustained crisis response on the mind and body. All adults and children seeking refuge deserve this service.

**2(c) Recommendation:** DHS should increase its funding to support opening neighborhood-based day service centers for youth and adults with a minimum of one in each ward, in order to meet community members where they are instead of requiring residents to travel to access the services they need. Funding should also be expanded to provide 24/7 refuge and support at centers specifically serving youth as well as residential centers specifically serving survivors of sex trafficking.

**2(d) Recommendation:** The Council, Mayor, and Office of Victim Services and Justice Grants should develop public-private partnerships to expand temporary shelter for survivors of domestic violence. This must happen in conjunction with the development of initiatives that help survivors secure safe and stable permanent housing within the District.

**2(e) Recommendation:** The Department of Housing and Community Development (DHCD) must enforce equitable development policies to protect community members in danger of being pushed out by land developers. The input of low-income citizens and BIPOC residents should govern urban development processes in order to shift away from the centralized decision-making power of wealthy developers.<sup>209</sup> A failure to consider the impact of urbanization and rapid development will worsen the housing and homelessness crises.

## Discussion

The District continues to experience a housing crisis and lacks adequate resources to ensure that every community member has access to safe and affordable housing.<sup>210</sup> The unfortunate result is a city with thousands of individuals, unaccompanied youth, and families experiencing homelessness each year.<sup>211</sup> Due to various definitions of homelessness and challenges counting individuals and families who are not sleeping on the streets or residing at a local shelter, and those who may be doubling up with other families, it is possible that there are hundreds of uncounted homeless adults and children. The Commission calls on the Council to consider potential remedies for

this issue to ensure that city agencies and community-based programs are funded at levels that reflect the real need as precisely as possible.

In the words of the American Psychological Association, “the psychological and physical impact of homelessness is a matter of public health concern.”<sup>212</sup> The intersection between homelessness, behavioral health illnesses, and substance use disorders cannot be overstated. Many residents who receive behavioral health services and/or SUD treatment by DCDBH programs and community-based service providers are also experiencing homelessness or are housing insecure.<sup>213</sup> Even after an individual has received treatment or aid from DBH or local providers, they are, as described by local addiction specialist Dr. Edwin Chapman, “released back onto the streets” with increased risk of police interaction and without safe and stable housing in which to continue their recovery.<sup>214</sup>

Dr. Chapman encourages the District to “look at housing as a medical treatment” by reducing barriers to housing for vulnerable community members.<sup>215</sup> We heard from a range of community organizations, many of whom cited housing instability as a core obstacle for the populations they serve when it comes to personal safety and reducing police interactions:

“If we were able to solve peoples’ housing issues, we’d have half the [domestic violence] cases we do now.”<sup>216</sup> - DC Safe

“Police do not make homeless people safer, permanent housing does.”<sup>217</sup> - Sarah Greenbaum, Public Witness, Metro DC Democratic Socialists of America

The Commission agrees. DC’s housing crisis—the lack of affordable housing units, high rates of homelessness, and resident displacement due to rapid development—must be addressed to improve public health and public safety. Housing is a basic human right and a lack of permanent housing keeps individuals in a state of heightened stress, which can trigger behavioral health symptoms and SUDs.<sup>218</sup> The District Task Force on Jails and Justice has recommended that the District invest in housing to prevent crimes of survival and reduce recidivism.<sup>219</sup> Moreover, the DC Grassroots Planning Coalition emphasizes the importance of including residents in the city planning processes.<sup>220</sup> Historically, development efforts have exacerbated the District’s housing crisis and overlooked the impact on existing families and communities. The Council should partner with this Coalition to develop remedies for housing instability derived from deep community research and engagement.

The Commission urges the Council, with the support of the Mayor, to increase funding for homelessness prevention and services, which must include establishing direct pathways to permanent housing. These resources must reach survivors of domestic violence and other vulnerable populations for whom the lack of stable, affordable housing raises their risk of abuse and homelessness.

One model to consider is providing flexible funds to support any housing-related needs individual survivors have. According to Georgetown Professor Deborah Epstein, relatively small amounts—typically less than \$500 and rarely more than \$1,500—can make a huge difference. According to one study, flexible funds led to substantial reductions in homelessness, greater access to stable housing, and a big increase in safety. As Professor Epstein told the Commission, “It’s those kinds of programs that we should be seeking to continue and expand, where research tells us that they work to both decrease domestic violence and lift people out of poverty.”<sup>221</sup>

3. **Recommendation:** Youth aging out of foster care represent a sizable portion of new homeless youth and sex trafficking victims each year. The District must prioritize services to protect these youth from harm and housing instability. Specifically:

**3(a) Recommendation:** The Office of Victim Services and Justice Grants, with funding from the Council, should explore federal funding opportunities through the John H. Chafee Foster Care Independence Program (commonly referred to as “Chafee”), the Family First initiative, and concessions provided to foster care agencies through the latest COVID-19 relief package to optimize services for youth in transition.

**3(b) Recommendation:** The District must increase pathways to permanent and supportive housing for youth aging out of foster care, with programming that addresses their unique needs. Those determining these needs should center the perspectives of youth in foster care, young people aging out, and adults who experienced the child welfare system as a child. The Council should work with relevant agencies to facilitate necessary data collection.

## Discussion

Improving access to long term housing is an important step in improving outcomes for youth transitioning out of the foster care system.<sup>222</sup> In a report about the vulnerability of foster youth aging out, the Annie E. Casey Foundation stated that the “back door of the foster care system is the front door of the homelessness system.”<sup>223</sup> With nearly one-third of all youth who age out of foster care each year experiencing homelessness, this is a vulnerable group whom the District must prioritize in its efforts to improve public safety.<sup>224</sup> This group overlaps with child sex trafficking survivors, with 60% of all survivors having a history of being in the child welfare system.<sup>225</sup> There are currently two federal funding streams available to increase support for youth in transition: Chafee grant dollars and funding from the Family First initiative.

An expansion of the Chafee program, a federal grant that provides cash assistance to foster youth, was included in the COVID-19 relief bill signed into law on December 27, 2020. The expansion consists of increased funding that states can provide as direct cash to foster youth to use for housing, transportation, and job-seeking. Alternatively, the District could use the funds to develop programs and services to get critical help to young people. The expansion also extends the age eligibility for this financial assistance to 27 years old and suspends the requirement of enrollment in secondary education or vocational training if the youth is unable to enroll because of the pandemic.

Also included in the relief package was a moratorium on transitioning youth out of foster care during the pandemic, as well as provisions that make it easier for foster youth to receive housing vouchers. These concessions allow states to continue providing support to youth during the pandemic. The Council should ensure that relevant agencies are aware of these resources and provide guidance on how these funds can be used to strengthen the continuum of care for foster youth in the District.

Additionally, after the 2019 Family First initiative became law, DC was the first jurisdiction to opt in to funding foster care prevention services financed through this bill.<sup>226</sup> Prevention services include substance use treatment and mental health services. The District should continue to use these funds to keep these vulnerable youth safe and limit their contacts with the criminal justice system. The December COVID-19 relief bill also raised reimbursement limits from 50% to 100% through FY 2021. These provisions allow for more flexibility and innovation as the Council explores how best to protect and empower youth aging out of foster care, in partnership with local advocates such as the Juvenile Law Center.<sup>227</sup>

4. **Recommendation:** The Council should decriminalize low-level offenses, including but not limited to illegal vending and panhandling.

4(a) **Recommendation:** MPD should educate officers to ensure that they do not violate the law by arresting people for fine-only infractions.<sup>228</sup>

### Discussion

Too often, the District polices, arrests, and jails low-income residents for engaging in “crimes of survival,” behaviors that are the result of failures of the social safety net and that have no impact on public safety. By outlawing actions like panhandling and illegal vending, the District in effect criminalizes poverty and homelessness, causing further harm to our most vulnerable neighbors by penalizing them for merely trying to survive:

“A person should have the right to sit on a park bench, go into a public facility, panhandle, etc., without fear of being arrested... The police once charged me for panhandling because they said I stepped in front of people or should have been on one side of the sidewalk or the other. The people could walk around me. But the police said it didn’t matter, and I had to pay a fine.”

- Gwynette Smith, vendor and artist for Street Sense Media<sup>229</sup>

“[W]e are not out here because we want to be. We’re out here because we have to be.”

- Ed, describing his experiences panhandling in Northwest Washington, DC<sup>230</sup>

“I sit here to try to generate some money, so I can take care of myself right now.”

- Antonio, describing his experiences panhandling around Farragut Square<sup>231</sup>

Many of the recommendations in this section and others are intended to lift residents out of homelessness and poverty by providing housing, behavioral health and wellness programs, employment opportunities, and other essential supports. While the District makes these investments to help community members thrive, it must simultaneously make legislative changes to stop causing people further harm simply because they are trying to survive. The District Task Force on Jails & Justice has recommended that the District “[c]onduct a thorough review of the D.C. criminal code to decriminalize certain offenses, converting them to civil offenses where enforcement is still desired.”<sup>232</sup> Echoing this view and recommendations issued by the District of Columbia Criminal Code Reform Commission (CCRC),<sup>233</sup> this Commission recommends that the Council decriminalize low-level offenses, including but not limited to illegal vending and panhandling.

Under the current DC laws, individuals who fail to comply with any of the District’s vending regulations may be jailed for up to 90 days and fined up to \$500, even if their conduct involves no other fraudulent activity, does not physically harm others, does not involve the sale of food that is spoiled, contaminated, or unfit for consumption, and doesn’t block public use of locations.<sup>234</sup> The District’s fees are far higher and recommendations are far more stringent than most other American cities, and concerns have been raised that these rules are enforced selectively in a way that disproportionately impacts certain people.<sup>235</sup> The Afro-American Vendors Association testified to the CCRC that:

Street vendors have been a hallmark in Washington, DC since the turn of the century when the first pushcart peddlers began selling their wares around the Capitol. Most vendors are people of color who earn very little money and work under harsh conditions. They perform an important service by providing

convenient and affordable goods to both Washingtonians and tourists alike. Street vendors are entrepreneurs who ask for nothing more than the opportunity to earn a decent living. Yet, the city continues to treat these small business owners as criminals.<sup>236</sup>

While MPD “reports hundreds of arrests for vending violations each year,” even so, “over the entire 10-year span of 2009-2018, there were just 58 charges and fewer than 20 convictions of adults for vending without a license.”<sup>237</sup> Furthermore, when the CCRC surveyed District voters, 28% of respondents (the largest group) said that vending without a license or permit was not a crime.<sup>238</sup> Other jurisdictions have implemented reforms in this area; California, for example, decriminalized public vending statewide in 2018.<sup>239</sup> In DC this year, following a recommendation from the CCRC, nine councilmembers introduced legislation to amend the Vending Regulation Act of 2009 by removing criminal penalties for violation of the act or a vending regulation.<sup>240</sup> The Commission recommends that the Council pass this legislation.

The Commission also recommends that Council develop and pass legislation to decriminalize panhandling. According to the CCRC, “[m]ost panhandling statutory provisions appear to be facially unconstitutional under recent Supreme Court case law, and the most severe forms of behavior addressed by the provisions involve conduct that is already criminalized in the RCC and current DC code.”<sup>241</sup> As previously discussed, panhandling “may be regarded as a status offense that criminalizes conduct associated with poverty and homelessness.”<sup>242</sup> Furthermore, 48% of DC voters believe that non-threatening “begging for money at a bus stop or on public transportation” is not a crime, according to a CCRC survey.<sup>243</sup> Cities like Chicago, IL, Sacramento, CA, Superior, WI, and Rio Rancho, NM have repealed panhandling bans or stopped enforcing them.<sup>244</sup> It is time for the District to follow suit. This Commission echoes the CCRC in recommending that Council repeal DC Code §§ 22-2301 - 22-2306 concerning illegal panhandling.<sup>245</sup>

In addition to the recommendations described above, the Commission urges MPD to educate its officers to ensure that they do not arrest people for fine-only infractions—a practice that officers currently engage in, in violation of case law.<sup>246</sup>

- 5. Recommendation: The Council should invest in community-based organizations led by Black, Indigenous, and other people of color (BIPOC) to create safe and supportive community spaces to hold informal and organic restorative justice community circles for community building, celebrations, and healing in the wake of violent and traumatic events. Similarly, the Council should invest in BIPOC-led, community-based organizations to hold community healing circle dialogues to support parents and community members in adopting a restorative approach to life, communication, parenting, etc.**

## Discussion

Restorative justice approaches have been found to be effective at building community, strengthening relationships, and fostering healing.<sup>247</sup> Restorative justice is first and foremost about relationships and the ways in which we create, nurture, and mend them. Restorative justice is most commonly discussed in the context of addressing harm, specifically ways to create spaces that, in the wake of traumatic events, allow for accountability and healing. The District Task Force on Jails & Justice has recommended that the District fully resource restorative justice practices, among other interventions, as an alternative to involving law enforcement in response to community conflict.<sup>248</sup>

This work should include developing and pilot-testing programs specifically designed to build natural support networks for survivors of domestic violence, who are often isolated and more vulnerable to continued abuse as a

result. We know that roughly half of all survivors do not want accountability through the criminal justice system, but they do want and need support.<sup>249</sup> *Creative Interventions Toolkit: A Practical Guide to Stop Interpersonal Violence* provides stories, lessons, and guidelines for leveraging natural support systems to promote safety. In one real-life situation, community members worked together to offer one survivor a safe place to stay while they also helped form longer-term plans, which included compiling a list of people to call for support, day or night:

“I had people checking on me, people staying during the daytime hours, sometimes overnight for the week. ... That was how we got home to be a safe space for me again.” In the end, “I did get all three things that I wanted: ... that my kids went through that time feeling safe; that [my husband] did leave the house; that I was able to return home. [And] all that happened in a fairly short time,” with support from the community.<sup>250</sup>

While there are a number of community-based organizations already doing powerful restorative justice work in DC, including the DC Peace Team and Restorative DC, this work is occurring on a small scale. Organizations lack funding to expand services and designated spaces for restorative justice processes.

The Council should create funding opportunities for BIPOC-led community-based organizations that would allow them to hire and train additional staff. Such funding should also support these organizations in reserving, if not purchasing accessible and centrally located meeting spaces to provide free restorative justice training for community members. This will give community members access to the tools they need to hold their own restorative justice circle processes.

In addition to trainings, community-based organizations can also use these secured community spaces to hold restorative justice circles for community-building (e.g., allowing neighbors to meet and get to know each other), community celebrations, and healing (e.g., to bring people together to mourn and begin to heal in the wake of traumatic events such as neighborhood shootings). Finally, these same spaces can be used as a way for parents and other community members to gather and share wisdom, support, and resources around parenting, healthy relationships, and other issues.

Investing in community-held restorative justice processes and spaces for these processes would not only foster a stronger sense of community, especially within rapidly gentrifying parts of the District, but would also help to prevent conflict, violence, and other harms, thereby decreasing communities’ reliance on law enforcement.

# Section III: Back to Normal: Re-establishing Police-Free Schools

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## OVERVIEW

Given the negative impact of encounters between police and young people, the District must radically transform its approach to school safety. The District of Columbia Public Schools' (DCPS) expressed vision is that “[e]very student feels loved, challenged, and prepared to positively influence society and thrive in life.”<sup>251</sup> Likewise, DCPS’s stated mission is to “[e]nsure that every school guarantees students reach their full potential through rigorous and joyful learning experiences provided in a nurturing environment.”<sup>252</sup>

As we describe in detail below, the daily presence of police officers in schools is antithetical to an environment meant to foster “joyful learning,” “nurturing,” and positive development. Youth of color in particular do not feel safe in educational spaces where they are interacting with a system of surveillance, control, and punishment that generally views Black and Brown people as a threat. Yet since 2005, when the DC City Council approved legislation essentially inviting police into public schools, MPD officers have taken the lead in school security.<sup>253</sup>

Policing schools is part of the United States’ long history of oppressing and criminalizing Black and Brown communities. Historically, school police have acted as agents of the state to maintain the status quo and suppress student organizing, especially among Black and Latinx students.

Law enforcement was embedded in schools beginning as early as the 1940s. The expansion and increased reliance on school policing coincides with the state’s desire to suppress the growing social movement against inequality . . . Schools were often an epicenter of the fight for racial justice. Attempts to dismantle systemic discrimination, like student protests, were often responded to with displays of police power . . . In the 1990s, communities experienced the proliferation of school policing as a coordinated strategy between the federal government, local municipalities and school districts to control Black and Brown youth under the guise of public safety. Students experienced an over-policing of classrooms, harsh, zero-tolerance school disciplinary policies, and a systematic underinvestment in their schools . . . The call for more policing and law enforcement strategies in schools reached a critical juncture after the 1999 Columbine High School shooting in Colorado. These national tragedies continue to be used as

justifications to enact policies that increase the number of police and weapons in schools and that make schools less safe for Black and Brown students.<sup>254</sup>

Today, Black and Brown youth are interacting with a larger, more controlling and combative police presence than ever before.<sup>255</sup> On average, DC public schools have one security guard for every 165 students, whereas they have only one social worker for every 254 students, one counselor for every 352 students, and one psychologist for every 529 students.<sup>256</sup> Schools populated mainly by students of color have more police officers, as well as more metal detectors, K-9 units, and military-grade weapons. A larger number of officers has led to an increase in school-based arrests, in which Black students are arrested at more than twice the rate of White students.<sup>257</sup> Students with disabilities and those who are lesbian, gay, bisexual, transgender, queer, intersex, or asexual also experience the harms of law enforcement presence at disproportionately higher rates than other youth.<sup>258</sup>

Once arrested, youth as well as their families can face an array of seemingly endless collateral consequences, including: loss of instructional time and course credits, lower grades, legal costs and court fees, separation from family, challenges to their immigration status, loss of housing or housing assistance, and loss of employment.<sup>259</sup> In addition to these tangible ramifications, many studies have documented the harmful psychological effects of law enforcement interacting with young people.

One researcher found that, for young Black men, external messages of their diminished value resulting from over-policing shape and reinforce their own negative self-images.<sup>260</sup> In another study, youth who reported being stopped by police were much more likely to have difficulty falling asleep and to have poor quality sleep in general.<sup>261</sup> Even when youth are bystanders or witnesses to “subtly abusive” police behaviors, they still experience trauma that lowers both the quality and length of their sleep.<sup>262</sup> In a separate study comparing youth who were stopped by police at school with those stopped on the street, being stopped at school was associated with more emotional distress during and after the stop, and with more social stigma and post-traumatic stress disorder after the stop.<sup>263</sup>

Policing schools is part of the United States’ long history of oppressing and criminalizing Black and Brown communities. ... [Y]oung people say they feel criminalized and unwelcome by the presence of police, as well as the metal detectors and other law enforcement equipment.

These research findings align with views expressed by youth in DC. The Commission heard from a panel of young people of color who described traumatizing interactions with police in their schools and neighborhoods and expressed a desire for police-free schools. They told the Commission that, instead of fostering safety in school, officers often escalate altercations, create a hostile atmosphere, and cause anxiety among young people by the mere presence of uniformed officers with guns. These young people say they feel criminalized and unwelcome by the presence of police as well as the metal detectors and other law enforcement equipment. One student asked, “If their purpose is to serve and protect, and the youth [are] saying that we don’t feel protected, then what are they there for?” Another student said, “The police are armed, but why is that necessary in a school environment? Who do they need to shoot?”

Collectively, these youth believe that funds used to pay for police in schools should be used instead to hire more counselors and support other services and programming that promote a healthy, safe, and beneficial learning environment. The Commission agrees. While the daily presence of police in schools has negatively affected a whole generation of youth in DC, the District has a much longer history of operating schools where police are rarely on campus. That is the normal, healthy reality to which the District must return. Schools throughout the District should be sanctuaries where children and adolescents can enjoy their youth, with all the beauty, possibility, antics, and occasional pain that entails. Instead of police in schools, the District needs more skilled and caring adults who can help young people navigate the opportunities and challenges of life in the classroom, schoolyard, and beyond. That takes money. The District must divest from patrolling and militarizing schools and invest instead in school resources and community-building strategies that will lead to safer, better schools all around.

## Recommendations

1. **Recommendation: Dismantle the school policing infrastructure and replace it with a holistic public health approach to school safety and crisis intervention that is relational, racially just, restorative, trauma-responsive, and trauma-informed.**

**1(a) Recommendation:** The Council should eliminate the MPD School Safety Division and create a community-led process to reallocate those resources (the roughly \$14 million in the existing budget) and designate additional funding to invest directly in services and resources that better protect youth and promote a safe and healthy learning environment.<sup>264</sup> Resources should be distributed based on schools' needs. The Council should consider these needs based on an analysis of violent crime occurring near schools as well as the percentage of special education students, English language learners, or economically disadvantaged students at each school. These services and resources should include but not be limited to the following:

- School-based mental health programs (SBMH): *An additional \$6.4 million to expand to the remaining 80 schools, placing a CBO clinician in every school.*
- Additional school counselors, psychologists, and social workers (to meet professional association standards): *An additional \$20.6 million.*
- Trauma-informed training, professional development, and supports for teachers and staff.
- Socio-emotional learning curriculum and implementation.
- Positive behavioral intervention and supports (PBIS) programs.
- Restorative justice programming (in both schools and in communities).
- School-based violence interrupter programming and training and community-based violence interrupter expansion: *\$5.6 million for the creation of school-based violence interrupter teams that are assigned to the designated safe passage priority areas in Wards 1, 5, 6, 7, and 8.*
- Expansion of roving leaders and credible messengers (in both schools and in communities).
- Safe passage programs driven by community members: *At least \$2.5 million to a pilot of 150-200 community members to support with safe passage.*
- Community based behavioral health services: *An additional \$4 million.*
- Behavioral intervention support staff, administrative staff, and behavioral support technicians at each school, including teachers' assistants responsible for behavior management support in the classroom.

- Access to spaces where students can express themselves through reading, writing, art, music, dance, and other creative outlets.
- Crisis response and safe passage systems that are not driven by law enforcement.

**1(b) Recommendation:** Support schools in shifting from a punitive to a restorative approach to discipline. Engage community-based organizations, including Restorative DC, to develop and implement a multi-year plan to create a restorative culture and build restorative justice approaches and practices in DC public schools. This plan should include restorative justice training and community-building experiences for teachers, administrative staff, students, and families. In addition to using restorative justice to address harm and conflict that occurs within schools, restorative approaches should be used for relationship and community building throughout the school year.

**1(c) Recommendation:** To facilitate the deployment of violence interrupters in schools, the DC Council should amend DC Code § 4-1501.05(c)(5) and 6-B DCMR § 416.2(c) to remove non-violent felony convictions from the list of convictions that disqualify volunteers from working in DC Public Schools or Public Charter Schools.

**1(d) Recommendation:** DCPS should eliminate the outsourcing of school security to better ensure that the people responsible for keeping students safe are integrated into the school system holistically and comprehensively. This includes the following:

- ☒ Change the role currently held by school security officers into a diverse group of care-based positions that explicitly contribute to a positive school climate.
- ☒ In addition to the 40 hours of basic training provided by DCPS' Social Emotional Learning team, require all members of school safety teams to complete additional trainings on topics such as mental health emergencies; culturally relevant verbal de-escalation; mental health first aid; and school crisis prevention intervention (CPI) (verbal and physical de-escalation).<sup>265</sup>

**1(e) Recommendation:** In the application and selection process, give first preference to current security personnel for the new school safety roles proposed in Recommendation 1(d).

**1(f) Recommendation:** Ensure that all DC public schools have plants, clean drinking water, healthy and ample food options, quality ventilation systems, and access to fresh air.

**1(g) Recommendation:** Ensure that DC public school curricula reflect the histories and accomplishments of children and adults of all ethnic backgrounds, races, and genders.

## Discussion

By the end of FY21, MPD should revise General Order 310.08 to disband its school safety division and redirect the entire budget to non-police school safety and crisis intervention that is relational, racially just, restorative, trauma-responsive, and trauma-informed. Eliminating MPD's school safety division and replacing it with supportive and restorative staff, programs, and resources will promote a safe and healthy school environment for every school in DC. The intent is to have schools offer services that are focused on student well-being, restorative justice, and de-escalation, which, when offered and implemented with the appropriate financial investment, should more productively address the challenges that currently concern school resource officers (SROs). The regular presence of police in schools creates more possibilities for young people to have negative contact with law enforcement, including physically and psychologically harmful episodes in which police use inappropriate force. Their presence also increases possibilities for young people to have contacts with the criminal legal system for disciplinary issues

that are more appropriate for school personnel to address directly. Therefore, it is in the best interests of the youth in the District for SROs to be replaced by professionals with expertise in adolescent behavior, development and wellness who will work to ensure a safe and empowering environment for young people.

Schools throughout the District should be sanctuaries where kids can be kids... Instead of police, the District needs more skilled and caring adults in schools who can help young people navigate the opportunities and challenges of life in the classroom, schoolyard, and beyond.

School policing is not the right approach to keeping students safe. This is especially true in communities of color that have historically had contentious relationships with law enforcement: “As a result, students of color often do not feel ‘safe’ with police patrolling their schools.”<sup>266</sup> Students of color are especially important to consider as they make up the majority of the student population in DC public schools.<sup>267</sup> School policing may also exacerbate the personal and interpersonal challenges that both students and staff face at school:

The over-policed atmosphere can initiate, rather than mitigate, misbehavior by increasing anxiety, alienating students, creating a sense of mistrust between peers, and forming adversarial relationships with school officials. Instead of ensuring safety and improving behavior, police presence often heightens disorder among students by diminishing the authority of school staff. When students perceive a negative school climate, they are less likely to be engaged, more likely to be truant or dropout and more likely to have issues with bullying.<sup>268</sup>

Therefore, the most appropriate way to ensure a healthy school environment is to get all police officers out of DC schools and bring in professionals who are more capable of addressing student needs.

Trained and experienced non-police professionals can better fulfill school resource officers’ current responsibilities that are *not* associated with the criminalization of youth. The “School Safety and Security in the District of Columbia” report lists the following tasks for SROs, all of which can be fulfilled by non-police professionals:

Coordinate mediations and response to conflicts that have happened or may happen off school grounds; coordinate MPD’s Safe Passage Program to provide safe routes for youth to and from secondary schools; provide mentoring and outreach programs, such as seminars, assemblies, and presentations on key topics that may impact youth safety, including bullying, drug use, social media, and gangs; conduct school security assessments focused on crime prevention through environmental design, and participate in safety meetings with the school administration; provide support to at-risk youth by conducting home visits to chronic truants or suspended students, and seminars to designated youth; and visit and work with the schools that feed into middle and high schools.<sup>269</sup>

In addition, MPD’s school safety division employs truancy officers who are responsible for picking up truant students. However non-police professionals, such as school staff, should replace the truancy officers to avoid unnecessary contact between young people and the police. Police school safety officers also actively engage in anti-gang initiatives, gang conflict intervention and mediation, which are the areas of expertise for violence interrupter

organizations. With appropriate funding, these organizations would be better suited to address the challenges with gang activity in the District.

It is critical that the Council focus on increasing investments in school-based mental health professionals in DC, as many DC schools are falling far short of the standards for the staffing of school counselors, psychologists, and social workers. These roles are critical, as “research has consistently found that the use of school-based mental health professionals and counselors can positively impact mental health, disciplinary problems, and attendance and academic achievement.”<sup>270</sup> Professional associations including the American School Counselor Association (ASCA), the National Association of School Psychologists (NASP), and the School Social Work Association of America (SSWAA) have all set standards for appropriate student-to-staff ratios for each of these roles. However, an analysis of a sample of 114 DC schools revealed that only 29% of them meet the standard for staffing school counselors; 62% meet the standard for staffing school psychologists; and 38% meet the standard for staffing school social workers.<sup>271</sup> All of these roles are critical to student well-being, and the District should prioritize meeting these standards as a way to promote a safe and nurturing school environment.

It is also critical that DC schools receive additional support from violence interrupters who can effectively prevent conflict from happening and de-escalate or mediate conflict when it does arise. DC schools used to have violence interrupters, but they faced barriers of limited or inconsistent funding, criminal background checks, and tensions with the police. Criminal background checks were a challenge because many of the violence interrupters had justice-involved backgrounds and were therefore ineligible to work in schools due to Title 4 Chapter 15 of the DC Code.<sup>272</sup> As detailed above, this code should be amended to allow people with criminal backgrounds more of an opportunity to be considered despite their past. Child abuse in one’s criminal history—defined in Title 16 Chapter 23 of the DC Code<sup>273</sup>—is the only offense that should be an automatic disqualification. Schools should retain discretion over hiring employees and enlisting volunteers; this recommendation is to eliminate the statutory bar.

Last year, the Council voted to end MPD’s nearly \$23 million school security contract with DCPS.<sup>274</sup> When the contract expires, DCPS should stop outsourcing school security so that the administration and school leaders may better ensure that safety personnel have greater inclusion and integration into the school’s community, its initiatives, functions, and trainings. Having the same training as everyone else in the school means learning trauma-sensitive approaches, cultural responsiveness, and the importance of reinforcing a common school culture. Safety personnel would be chosen by and directly accountable to local school leadership and DCPS would provide direct support to safety personnel. Security staff should be diverse, and current staff members should continue to be considered for security positions if they are eligible. With the redistribution of money spent on school policing, DCPS can create and staff these care-based positions in schools at the scale it currently staffs policing and school security officers. In reallocating those funds to create these positions, we also create a new system which includes a pathway to school-based careers not preempted by violence or disproportionate power over young people, but instead rooted in restorative practices and healing-centered community care. The \$23 million that currently funds 328 positions under the 2017-2021 contract with MPD may now be reallocated to replace outsourced school security and invest in in-house school safety personnel.

Police-free schools need to proactively create a culture that promotes restorative, trauma-sensitive, and trauma-informed approaches. A restorative approach “maintains a focus on accountability of actions with a specific emphasis on empathy and repairing harm,” and “seeks to address underlying issues of misbehavior and reintegrate wrongdoers back into the school and classroom community.”<sup>275</sup> A trauma-informed approach is when the school “realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-

traumatization.”<sup>276</sup> A trauma-responsive approach is when “teachers use proactive and restorative, rather than punitive, practices to build the self-regulation skills of students that experience chronic trauma. The aim is to make classrooms that are both educative and therapeutic spaces that meet students where they are instead of punishing them for struggling with traumatic stress. The goal is to include self-regulation and trauma process activities.”<sup>277</sup> The Council and DCPS should center these approaches as they pursue policy and practice changes that will impact DC students.

Other District agencies have published recommendations consistent with the ones in this section. These publications include the District of Columbia State Board of Education’s “Resolution to Recognize the Importance of Removing All Police From DC Public and Charter Schools”<sup>278</sup> (2020); and the District Task Force on Jails & Justice’s “Jails & Justice: Our Transformation Starts Today: Phase II Findings and Implementation Plan”<sup>279</sup> (2021). The Council should consider the extensive support for these reforms from these and other agencies, academics, advocates, and organizations. With support from all these stakeholders, it is possible for DC to successfully have police-free schools where students are safe and thriving; it is critical that the Council take the next step toward achieving that success.

## **2. Recommendation: Reduce opportunities for youth to be arrested at school.**

**2(a) Recommendation:** The Council should prohibit MPD from serving warrants, detaining, or arresting youth on campus or at school-related events for non-school-based offenses or custody orders. The Council should also require any other law enforcement agency to present a warrant to a school administrator when seeking to enter nonpublic school grounds<sup>280</sup> and detain or arrest a student at any District of Columbia public schools or public charter school absent exigent circumstances.<sup>281</sup>

**2(b) Recommendation:** The Council should prohibit MPD from detaining or arresting youth on campus for school-based offenses, except for arrests for violent incidents involving the use of a dangerous “weapon” as defined by the District of Columbia Public Schools Chapter B25 of the DC Municipal Regulations. The Council should also prohibit DC public schools from allowing other law enforcement agencies to detain or arrest youth on campus for school-based offenses, except for arrests for violent incidents involving the use of dangerous “weapons” as defined by the District of Columbia Public Schools Chapter B25 of the DC Municipal Regulations.

**2(c) Recommendation:** MPD should amend the “Handling School-Related Events” General Order<sup>282</sup> to reflect the prohibitions outlined in recommendations 1(a) and 1(b).

**2(d) Recommendation:** The Council should prohibit police from accessing children’s school records without a warrant or written permission from the child’s guardian.

**2(e) Recommendation:** The Council should prohibit school administration, teachers, or other school-affiliated personnel, including school-based MPD representatives from detaining, arresting, questioning, or in any way facilitating the coordination of a student or a student’s family to state, District, or federal immigration agencies.

**2(f) Recommendation:** The Council should prohibit school administration, teachers, or other school-affiliated personnel, including school-based MPD and other school security representatives from reporting or providing any student or student’s family information, including student photos or descriptions, to the US Immigration and Customs Enforcement or MPD without a warrant.

## Discussion

With greater restrictions on police arresting students at school, DC schools will be able to promote a more nurturing environment in which the fear of contact with the police and the criminal legal system does not discourage school attendance and participation. Furthermore, these restrictions on student arrests will support the mental health and well-being of young people who, research shows, may experience higher levels of anxiety and trauma associated with their experiences of police contact and may experience heightened stress from witnessing the police use excessive force during an arrest.<sup>283</sup> Given the small number of instances during the last school year in which students were arrested for using a dangerous weapon in DC schools, this policy change should dramatically diminish the number of youth who face arrest while at school and promote a culture in which students feel safe to participate in school without concern for any outstanding legal issues that pose no imminent threat to the school environment.

MPD's current policies do not go far enough to limit the possibility of student arrests in DC. The "Handling School-Related Events" General Order (2020) details the protocols for MPD members responding to crimes and incidents involving schools, students, and school staff, and includes the directive that MPD members should not respond to calls for service that are related to school discipline issues. The order also encourages officers to attempt diversion responses before arresting a student; examples of exceptional circumstances that may require officers to arrest students include "felonies, misdemeanors with serious physical injury or involving weapons, assaults that occur off school property within safe passage zones."<sup>284</sup> These exceptions are provided as examples, not as an exhaustive and exclusive list; this suggests that MPD members may still use other reasons to take a youth into custody. The order also instructs members to "take reasonable steps to avoid disruption to other students" when making a student arrest. And, when there are no immediate public safety concerns, officers are instructed to not make an on-scene arrest.<sup>285</sup> These current boundaries and suggestions around police officer conduct in school arrests should be strengthened by the definitive restrictions listed in the Commission's proposed recommendations.

While this most recent MPD General Order prioritizes diversion efforts before arrests, hundreds of students have been arrested in prior school years. In the 2018-19 school year alone, 338 students (including 312 Black students) were arrested across 26 campuses (including at least 11 middle schools/K-8 schools).<sup>286</sup> This data shows an alarming overcriminalization of Black youth given that 92% of students arrested at school are Black, while Black students in DCPS represented 59% of the total population that year.<sup>287</sup> In addition, MPD provided a breakdown of arrest data from the 2019-2020 school year (a year that was interrupted due to the pandemic), revealing that out of 98 students arrested across 25 campuses in DC schools, only two were arrested for "Assault with a Dangerous Weapon."<sup>288</sup> This data shows that student use of dangerous weapons is rare, and limiting student arrests to these violent instances should substantially decrease police contact with students in DC schools.

Not only should MPD arrests be restricted at schools, but arrests from other law enforcement, including immigration agencies, should also be limited. Undocumented students should have the opportunity to get an education without being targeted for their immigration status. These students "are at risk of detention and potentially deportation proceedings because of school policing and heightened surveillance," a report found. "Any interaction that results in police collecting a student's information, including tickets, citations, and arrests can put a student at risk."<sup>289</sup> Therefore, the reporting of students to immigration agencies should be strictly prohibited as outlined in the above recommendations.

The act of police arresting students at school distracts from the nurturing learning environment and perpetuates the criminalization of youth, especially Black youth:

After being arrested by school police officers, students face a myriad of collateral consequences that harm their future, their families and their communities including: loss of instructional time and course credits; legal costs and court fees; separation from family; emotional trauma; challenges to their immigration status; loss of housing or housing assistance; and loss of employment. These consequences only exacerbate racial and ethnic disparities already entrenched in a justice system where Black youth are five times as likely to be incarcerated as their White peers.<sup>290</sup>

Therefore, instances in which youth participate in non-violent crime can and should be addressed off campus and/or with diversion approaches, without the potentially traumatic and humiliating display of peers watching peers get taken into police custody. Instances in which youth exhibit behavioral issues can and should be dealt with by the school's administration without escalating to law enforcement involvement.

- 3. Recommendation: Make schools weapon-free<sup>291</sup> for both adults (including law enforcement) and youth. Law enforcement officers must disarm before going into school facilities, unless responding to violent incidents involving the use of a lethal weapon such as firearms, as described in 18 U.S.C. § 921 (2000), explosives, and chemical weapons.**

## Discussion

Permitting the possession of weapons in a school environment increases the potential that individuals may use them to cause harm to young people and may create a hostile environment where students fear for their physical safety, especially with regards to law enforcement in communities where there is pervasive distrust of police. Therefore, to protect youth from potential harm and the threat of harm, schools should prohibit the possession of weapons by anyone on campus, including law enforcement.

The District of Columbia Code currently designates areas within proximity to schools as “gun free zones,” meaning that violators will face penalties that are up to twice as severe as the penalties that would otherwise be enforced.<sup>292</sup> However, law enforcement officers are exempted from these restrictions. In fact, the “Uniform, Equipment, and Appearance Standards” General Order states that on-duty MPD members “shall carry their Department issued service weapon,” in addition to OC spray and a baton, even when on school grounds. However, in other facilities, MPD officers are currently allowed or required to store their weapons prior to entering; facilities that may request that officers store weapons include the DC jail, Saint Elizabeths Hospital, and the Psychiatric Institute of Washington.<sup>293</sup> This list of facilities requesting or requiring MPD members to store weapons should include DC schools. Furthermore, all weapons, including the officer's baton, OC spray, and gun, should be prohibited.

Recognizing the potential for dangerous individuals to cause serious harm with weapons, the one exceptional circumstance under which MPD should be on school grounds with their weapons is if they are responding to a violent incident involving the use of a lethal weapon. Otherwise, they may find a secure location to store their weapons when visiting school campuses, such as in a lock box. A similar practice has been established in Baltimore, MD, where the city's school-based police officers are permitted to carry service firearms while patrolling outside of school buildings before and after school hours, but are required to store their weapons in a secure location while they are working inside the schools during the school day.<sup>294</sup> The proposed policy change for DC would be even more helpful for promoting a nurturing school environment by not allowing the weapons at school unless there are exceptional circumstances.

# Section IV: Trusting and Investing in Communities to Stem Gun Violence

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## OVERVIEW

Everyone deserves to be safe. Yet while safety is taken for granted in some DC communities, it remains precarious in others. To be free of violence is just one measure of safety,<sup>295</sup> but an important one. Life itself can depend on it. Last year, 173 people were shot and killed in the District of Columbia, a death toll that has been steadily climbing in recent years; another 843 people survived what could easily have been fatal gunshot wounds. Eighty-seven percent of all homicides in DC last year involved a firearm.<sup>296</sup>

The lives lost include a 15-month-old baby boy named Carmelo Duncan, shot multiple times while riding in the backseat of the car his father drove down Southern Avenue along the border with Maryland.<sup>297</sup> That southeast corner of the District is one of the deadliest, with rates of gun violence more than 10 times higher than neighborhoods in northwest DC.<sup>298</sup>

The gap in safety mirrors the huge gap in wealth and opportunity that cleaves along racial lines here, as it does in cities across the country. Violence is most pervasive and takes its greatest toll in areas of the District where predominantly Black and Brown residents have the least access to wealth. Not surprisingly, these same communities lack the resources and opportunities that flow from wealth and that enhance safety: high-performing schools that open doors and minds, quality hospitals, preventative healthcare, housing that's secure and feels like home, healthy food, clean air and water, reliable public transportation, and good-paying jobs that help create and sustain wealth locally.<sup>299</sup>

Sociologists and public health professionals who study gun violence refer to the absence of these and other essential resources as the social determinants of violence.<sup>300</sup> Moreover, exposure to violence and the resulting trauma is itself a social determinant of violence; or as Beverly Smith-Brown explained to the Commission, “Hurt people hurt people.”<sup>301</sup> This truth, which helps to explain the significant overlap between victims and perpetrators of violence, is baked into the name of the DC-based youth-led anti-violence organization the TRIGGER Project, which stands for “True Reasons I Grabbed the Gun Evolved from Risks.”<sup>302</sup>

In communities with elevated rates of gun violence, those risks also include violence by police—actual uses of force and the ever-present threat of police violence that many Black residents feel. Even as gun violence is increasingly

understood as a public health problem occurring in epidemic proportions, it continues to drive and erroneously justify aggressive policing strategies and tactics that range from officers routinely pressuring boys and young men of color to lift their shirts and show their waistband, to adrenaline-fueled, confrontational encounters like the one that ended Deon Kay's life at age 18.

In the next section of this report, we describe reforms needed to take a harm-reduction approach to policing that is also a far more legitimate use of law enforcement—and more effective in promoting safety. But because community-based interventions, not police, should be at the center of efforts to stem violence (including gun violence), we focus first on why and how those efforts should be expanded and strengthened—reasoning rooted in a growing base of research evidence.

Sociologist Patrick Sharkey has studied the steep decline in crime that followed the peak of violence in the 1990s, research that has captured attention nationally.<sup>303</sup> In his retrospective look at cities around the country, Sharkey found that for every 10 new organizations formed to address violence and build stronger communities, there was a nine percent drop in the murder rate.<sup>304</sup> Sharkey also points to studies showing the potential for community-based interventions to reduce violence, and concludes: “[W]e should be investing in the residents and community organizations that have always had the capacity to control violence, but have never had the resources to do so in a sustainable way.”<sup>305</sup>

Even as gun violence is increasingly understood as a public health problem occurring in epidemic proportions, it continues to drive and erroneously justify aggressive policing strategies and tactics.

When Beverly Smith-Brown spoke with this Commission, she did more than explain the cycle of violence—that “hurt people hurt people”—she also emphasized that “healed people heal people.” She is one of them. Smith-Brown works as a credible messenger, helping young people make life-affirming choices. She is emblematic of the tremendous commitment and capacity within communities to promote healing and renewal, which is the foundation for sustained reductions in all forms of violence.

The District must invest far more dollars and other resources directly in these communities, while also improving coordination of all services and interventions and deepening the commitment to learning what works. The following recommendations for scaling up and strengthening public health-centered, community-based solutions to gun violence suggest how the District can move intelligently and boldly forward, in step with communities, along a path to recovery that has only just begun. While our recommendations fall far short of the broad and deep measures needed to close the gap in wealth and opportunity that is the product of historic and structural racism, and that underlies much of the violence in DC today, we believe they are part of building a more just and racially equal city that's safe everywhere.

## Recommendations

1. **Recommendation:** To have a meaningful and lasting impact on gun violence, the District must de-center policing and take a far more integrated, coordinated, inquisitive, data-driven, and long-term approach to

**supporting community-based solutions. Without this overall shift, none of the specific investments we recommend below will fully pay off.**

## Discussion

Roughly four years ago, with passage of the Neighborhood Engagement Achieves Results (NEAR) Act, the Council signaled the importance of relying more on community-based solutions to violence. While the promise of that legislation is far from fully realized, and indeed the City Auditor is in the process of determining to what extent the various provisions of the Act have been implemented as intended, there has been progress.

In perhaps the most significant step forward, the District now has a permanent agency to support community-based solutions to violence, the Office of Neighborhood Safety and Engagement (ONSE). In just a few years, the ONSE annual budget has grown from \$2.8 million in FY18 when it was established to \$10.4 million in FY21; but it remains a tiny fraction of the nearly \$545 million allocated to the MPD in FY21.<sup>306</sup> And ONSE lacks the authority to coordinate violence reduction efforts Districtwide, aligning the various government agencies involved in this multifaceted work.<sup>307</sup>

Given the dire need for improved coordination—something numerous people within and outside government underscored in their remarks to this Commission—we are heartened by the creation in late January of a DC gun violence prevention coordinator (GVPC), a senior-level official reporting directly to the city administrator.<sup>308</sup> The creation in mid-February of a gun violence emergency operations center (EOC)—akin to the EOC established to address the coronavirus pandemic—and the new Building Blocks initiative suggest that the Mayor’s administration understands gun violence as a public health crisis that is fueled by deep and longstanding structural inequities that diminish the value of Black lives and put those lives in jeopardy.<sup>309</sup>

“[W]e should be investing in the residents and community organizations that have always had the capacity to control violence, but have never had the resources to do so in a sustainable way.”

While there is great potential in these new efforts, how they are carried out is of considerable concern to this Commission. We are especially mindful that these new government entities must be part of ending harmful policing practices. They must facilitate, not impede deep reform of MPD. An effort to strengthen neighborhoods block by block is incompatible with the District’s current approach to policing those same neighborhoods.

Equally important, the collective impact of these new entities should be a stronger ONSE.<sup>310</sup> The goal should be to build durable community-based programs and services that promote safety and well-being, not efforts that are defunded and collapse when the current gun violence crisis passes. And while the focus on gun violence is justified, it should not eclipse the need to fund and otherwise support creative, community-based solutions to other harms—actions this Commission calls for in the first two sections of this report. The mandate of the Office of Neighborhood Safety and Engagement is broader than gun violence.

It is also incumbent upon the gun violence prevention coordinator, the city administrator, the Mayor, and ultimately the Council, to ensure that these new entities intended to marshal and coordinate resources are truly effective,

rather than just additional layers of bureaucracy. The District must break through silos and align agencies and initiatives. Each is a piece of the solution; they must work in concert toward shared goals.

Running proven, high-quality programs—which entails setting clear objectives, tracking outcomes, and holding programs and agencies accountable—is just as important. Everyone involved must be more rigorous in learning what works best. Neither officials nor the public should expect miracles immediately; patience is a virtue. At the same time, there must be a concerted effort to measure impact, in numbers and other ways, and refine these interventions as necessary.

All initiatives should include an adequately funded evaluation that provides a feedback loop of data and information early on and throughout a program’s lifespan, to maximize positive outcomes and prevent or minimize unintended harm. These internal assessments and formal research studies should examine interventions in context, as one piece of the solution. And they must include discussions, focus groups, interviews, and/or surveys with frontline staff and program participants to understand what is and isn’t working from their perspectives.

Gathering this kind of information and acting on it is essential for running a program that engages and retains participants because it meets their needs, as University of Maryland Professor Joseph Richardson explained to the Commission. When young men in the hospital-based violence interruption program he started told him they didn’t feel safe taking the subway for follow-up support, Professor Richardson tapped Uber Health to provide transportation. When they told him it was retraumatizing to return to hospital, he moved the meeting location to a university classroom.<sup>311</sup> Relatively small adjustments like these can make a huge difference, in part because they show someone is listening and cares.

Finally, government must operate transparently and in genuine partnership with communities of color where rates of violence are highest.<sup>312</sup> The people closest to the problem are indeed closest to the solution; many of them have been making their neighborhoods safer for decades. Listening to them, supporting them, and working with them is the only way to build a truly safer, stronger DC. A resident captured it well when she told one senior official, “When you plan for me, without me, you plan against me.”<sup>313</sup> We explore all these shifts in more detail below in the context of specific recommendations.

**2. Recommendation: Streamline and scale up violence interruption initiatives as a crucial first line of intervention. Specifically:**

**2 (a) Recommendation:** The District should consolidate the violence interruption initiatives currently run by ONSE and the OAG and operate both under ONSE. This shift should be accompanied by an independent assessment funded by the Council, designed to illuminate the respective strengths and weaknesses of these somewhat different programs to ensure that the best of each is preserved.

**2 (b) Recommendation:** The Council should fund the strategic expansion of violence interruption initiatives, enabling these programs to serve more neighborhoods that experience elevated and/or quickly rising rates of gun violence. This expansion should occur in tandem with increasingly rigorous efforts to assess their effectiveness, understanding that programs of this kind can take five to seven years to mature and bear fruit. Expansion should also involve a concerted effort to reach more deeply into communities, forging new or stronger partnerships, including with faith-based organizations that for decades have been at the forefront promoting peace.

**2 (c) Recommendation:** The Council should ensure that the new Level-3 trauma center at St. Elizabeths East, serving Wards 7 and 8, includes a hospital-based violence intervention program (HVIP) operated in partnership with a local community-based organization akin to the District’s other HVIPs.

The Council and Department of Health must also hold Universal Health Services and George Washington University Hospital accountable for fulfilling their promise to meaningfully consult with residents of Wards 7 and 8 throughout the process of planning, building, and staffing the facility so that it provides culturally competent care and meets the healthcare needs of residents as they define them.

## Discussion

In the 1990s, when gun violence in DC was more prevalent and deadly than it is now, Black men who had survived violence in the streets—and often also a violent criminal legal system—began working to save the lives of others. They banded together as Peaceholics, Ceasefire Don’t Smoke the Brothers and Sisters, and the Alliance of Concerned Men. Along with members of the clergy, they were the District’s first violence interrupters.

Once this type of work spread nationally and internationally as Ceasefire, Cure Violence, and other variants, research followed. While site-specific evaluations of violence interruption programs have yielded mixed results, that growing body of evidence clearly demonstrates the potential for significant gains in safety.<sup>314</sup>

This potential is clear from a few recent studies designed to isolate the impact of intervention: an estimated 31.5% reduction in gun homicides citywide in Oakland;<sup>315</sup> a 30% reduction in shootings in Philadelphia neighborhoods with some of city’s the highest levels of gun violence;<sup>316</sup> 55% fewer deaths and hospital visits, and 43% fewer crimes in Richmond, California;<sup>317</sup> and as much as a 50% reduction in gun injury rates in targeted New York City neighborhoods.<sup>318</sup> The researchers studying NYC also conducted extensive surveys with young men engaged through the program and found that after the introduction of the program, they were much less likely to support the use of violence to settle disputes.

The core strategies underlying violence interruption—positively engaging those most at risk of harming others or being hurt themselves, intervening quickly to mediate disputes or prevent retaliatory violence, and connecting individuals with resources that facilitate healing and life change—represent a community-based, public health-centered approach to stemming violence that is poised to become the dominant paradigm nationwide and to de-center policing.<sup>319</sup> A June 2020 national poll conducted by Data for Progress shows that a majority of likely voters support community-based violence interruption: 68% of all likely voters, including 62% of Republicans, support training community leaders in de-escalation and other strategies to prevent violence. Moreover, roughly the same proportions of likely voters believe these strategies are more effective than police.<sup>320</sup>

As Interim Deputy Mayor for Public Safety Dr. Roger Mitchell told this Commission in December: “The only way we can deal with violence is one person at a time.”<sup>321</sup> This is especially true in DC today since most shootings and stabbings occur in reaction to a heated argument, stinging insult or slight, or some other “beef” between individuals—an altogether different dynamic from the organized drug trade that drove up gun violence in the 1990s.<sup>322</sup>

### *Coordinating and Streamlining Violence Interruption Initiatives*

In DC today there are a variety of violence interruption initiatives. There are credible messengers funded through the Department of Youth Rehabilitation Services who act as mentors and sometimes mediators to promote positive youth development and prevent violence. There are roving leaders affiliated with the Department of Parks and Recreation, and more than 40 faith organizations working through the East of the River Police Clergy Partnership to keep the peace. There are violence interrupters based in hospitals funded by the Office of Victim Services and Justice Grants (OVSJG). The District also has two signature violence interruption initiatives: Cure the Streets (CTS), operating in six neighborhoods under the auspices of the DC Office of the Attorney General (OAG), and ONSE violence interrupters active in 20 sites.<sup>323</sup> Across all of them, the actual work of interrupting violence is primarily undertaken by individuals working for community-based organizations.

Coordinating these and other similar efforts, and when necessary streamlining them, should be a priority for the District and for the newly appointed gun violence prevention coordinator in particular. Programs can be hamstrung by lack of coordination. Violence interrupters working for CTS told the Commission they don't always know when a hospital-based violence interruption program encounters someone in their catchment area who has been seriously injured. Nor is there a clear pathway to crucial life-change programs—in particular, Pathways, the transitional employment program that ONSE operates.<sup>324</sup> Piecemeal initiatives and year-to-year contracts make it hard to plan and strategically grow this work.

One obvious next step is to consolidate the violence interruption initiatives currently run by ONSE and the OAG, operating both under ONSE. Attorney General Karl Racine's action to bring the Cure Violence model to DC before ONSE was operational has undoubtedly saved lives. But it is now time to bring Cure the Streets under the auspices of the District agency created specifically to enhance neighborhood safety through community engagement. This move should not be made in haste, however: The Commission was warned against merely 'sandwiching' the two together.

As part of the process, the Gun Violence Prevention Coordinator, with funding from the Council, should immediately commission an independent assessment designed to illuminate the respective strengths and weaknesses of these two programs, ensuring that the best of each is preserved. While both are rooted in a public health approach to reducing violence and rely on credible, trusted community members to engage individuals most at risk of harming someone else or being hurt themselves, the programs are not identical. ONSE contracts with somewhat larger, multifaceted CBOs while CTS works with smaller, highly focused organizations. Their staffing models seem to differ somewhat, as does their ability to occasionally reach outside of their catchment areas to peacefully resolve disputes—just to name a few apparent differences known to this Commission, albeit not in detail.

An independent assessment undertaken collaboratively with ONSE and the OAG should consider each program's theory of change and organizational culture; their operational parameters (what they do and don't do) and the strengths and limitations of the CBOs that provide direct services; their catchment areas (i.e., neighborhood assets and challenges, including trends in violence); their staffing models within sites and at the agency level, and capacity for expansion; their operational budgets and potential to raise funds from non-government sources; and any outcome data available (i.e., changes in rates of violence, duration of ceasefires, positive outcomes for individuals, etc.). Beyond promoting better understanding these two programs, this is precisely the kind of information that should inform decisions about scaling up and expanding this type of work, which we discuss immediately below.

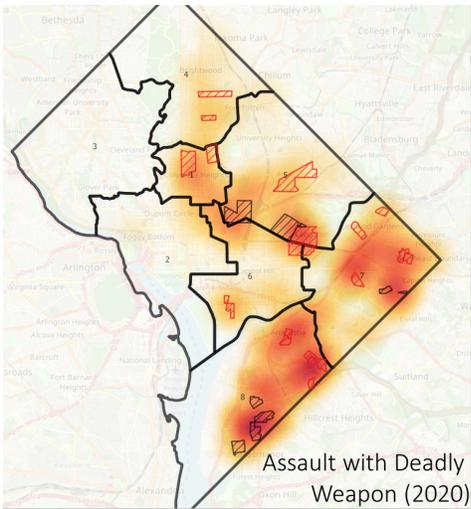
*Scaling Up Neighborhood-Based Violence Interruption*

Each of the 26 CTS and ONSE sites across Wards 1, 4, 5, 6, 7, and 8, are relatively small, sometimes encompassing just a few square blocks. As one experienced CTS interrupter explained: “The model depends on relationships; you can’t go where you don’t know people.”<sup>325</sup> While rates of gun violence are elevated in these 26 sites, the threat extends beyond them as the following map shows (Figure 1). That is why everyone the Commission consulted who has knowledge of these frontline interventions called for their expansion, as did the phase II report of the District Task Force on Jails and Justice.<sup>326</sup> In testifying before the Council’s Committee on the Judiciary and Public Safety, Attorney General Racine said, “Now is the time to invest more in these programs.” Only by scaling them up, he explained, will the District discover their full potential, learning whether they can indeed “anchor” efforts to build and sustain safe neighborhoods.<sup>327</sup>

While neither ONSE nor CTS has been subject to a formal evaluation (and both should be) they are maturing and showing signs of value. Last year, when gun homicides spiked in cities nationally and rose 33 percent in the District, the 26 sites with violence interrupters collectively saw a seven percent decrease compared with 2019, according to an analysis conducted by the Commission.<sup>328</sup> While non-fatal shootings jumped 19 percent Districtwide, they rose just six percent in sites with violence interrupters.<sup>329</sup> Some sites reportedly experienced far more dramatic reductions in gun violence or violent crime overall.<sup>330</sup>

This short-term trend is encouraging, especially given the challenges posed by the pandemic.<sup>331</sup> It suggests the District’s initial investment in violence interruption is beginning to pay off. Experience in other jurisdictions indicates that programs of this kind can take five to seven years to mature and bear fruit.<sup>332</sup> Strategic expansion of this work should occur in tandem with rigorous research (the assessment recommended above could constitute a first phase of research) designed to evaluate impact along several parameters and consider violence interruption in context. As we discuss later in this section, violence interrupters are just one part of stemming gun violence.

**Figure 1: Reported Incidents of Assault with a Deadly Weapon (Gun Only) in 2020<sup>333</sup>**



Decisions about where to expand should be guided by gun violence data analysis, the capacity of local CBOs to undertake this work, and consideration of the language skills and cultural competency needed for violence interrupters to work in predominantly Spanish-speaking communities where rates of gun violence are rising.

There should be a concerted effort to build the capacity of current CBO partners to take on additional sites and to engage and support new CBOs that are well-situated to run violence interruption programs. Larger churches and faith-based coalitions long involved in efforts to keep the peace could be natural partners, for example. In any case, chaplains, rabbis, and Imams should be among the first responders to homicides, not just called upon later to preside over funerals.

Formal initiatives should leverage the capacity of community members who are willing to volunteer their time to help power programs led by paid, professional staff. ONSE appears to be moving in that direction through the establishment of Community Response Teams (CRT). “We want to empower community members to do the work as much as possible, and we can provide them with technical assistance or support. Our contractors constantly work with community partners, so there is a broad base of grassroots intersectional work to draw upon.”<sup>334</sup>

The Commission was advised by several people within and outside of government that a staged scale-up that includes capacity building for CBOs is far more likely to result in sustainable growth and better outcomes.<sup>335</sup> In addition, while there are certainly efficiencies of scale to reap, government will need to expand its own capacity and have strong leadership to manage a larger body of neighborhood-based violence interruption work. While it would be wrong for this Commission to dictate the precise magnitude and pace of scale-up, we urge the Council to allocate funding to significantly expand this crucial frontline intervention over the coming three years, with the expectation of continued funding subject to increasingly rigorous evidence of its effectiveness.

We focus here on expanding the neighborhood-based violence interruption initiatives currently operating under the auspices of ONSE and the OAG’s Cure the Streets program. Other violence interruption initiatives, which are not necessarily site-specific (i.e., organized around particular blocks) might also merit expansion. Most important, the District must take a big-picture approach to growing this diverse work, considering existing initiatives as well as new ideas and partnerships in context. Otherwise, violence interruption will remain piecemeal and be far less effective than it could and needs to be.

#### *Leveraging the New Trauma Center East of the River to Save Lives in the Long Run*

The development underway of a hospital with a Level 3 trauma center in Ward 8 promises to significantly increase health equity in the District and save lives.<sup>336</sup> The only hospital east of the river now, United Medical Center (UMC) lacks a trauma center, despite its proximity to areas of the District where serious car crashes, gun violence, and near-fatal stabbings are most concentrated.<sup>337</sup>

Based on data from DC Health, the new hospital at St. Elizabeths East replacing UMC is expected to meet the medical needs of more than 85 percent of people experiencing trauma as the result of a serious accident or injury, including gun shot.<sup>338</sup> Dramatically reducing, or ideally zeroing out their risk of future injury from violence is equally important.

A substantial body of literature shows that people who’ve been shot, stabbed, or otherwise violently injured are at high risk for reinjury.<sup>339</sup> Nationally, violent injury recidivism rates can be as high as 65% and are commonly 30-40%.<sup>340</sup> Through funding administered by the OVSJG, the District currently supports five hospital-based violence intervention programs (HVIPs) to counter this deeply troubling trend.<sup>341</sup> HVIPs draw on physicians, credible messengers, mental healthcare providers, and case workers to take advantage of the teachable moment that occurs when a person is seriously injured as a result of violence, an opportunity that begins in a hospital recovery room.

One advantage of these programs is their capacity to engage people across the city as opposed to working in focal neighborhoods.

Although more research is needed, there is evidence that HVIPs can reduce rates of reinjury and future involvement in the criminal legal system, while also cutting healthcare costs.<sup>342</sup> For example, UCSF Medical Center, site of the San Francisco Wraparound Project, saw its reinjury rate drop from 36% to 11%, with the potential to save an estimated \$1.9 million annually if the project were to operate at scale serving all victims of serious violence.<sup>343</sup> An evaluation of Prescription for Hope (RxH), an HVIP based within an Indianapolis hospital, found that such positive outcomes were sustained over several years.<sup>344</sup>

The District-funded HVIP at Medstar Washington Hospital is part of a multi-site randomized control study underway that promises to yield definitive evidence of its impact. In the meantime, short-term outcome data provided by OVSJG is encouraging. The District's five HVIPs engage more than 500 survivors of violent injury annually (gunshot wounds account for roughly one-third of all injuries).<sup>345</sup> Across these five hospitals in 2020, only 10 participants were treated for a subsequent violent injury and just 17 participants had subsequent interaction with the criminal legal system that year.<sup>346</sup>

The Council has played a leadership role in paving the way for the new trauma center east of the river. Now it must take whatever action is needed to ensure that Universal Health Services and George Washington University, which are leading the development, agree to operate an HVIP and that funding is earmarked for this purpose.<sup>347</sup> Fortunately, George Washington University already has experience in this regard, running an HVIP in partnership with Far Southeast Family Strengthening Collaborative at George Washington University Hospital.

In addition, the Council and Department of Health should hold Universal Health Services and George Washington University Hospital accountable for fulfilling their promise to meaningfully consult with residents of Wards 7 and 8 throughout the process of planning, building, and staffing the facility so that it provides culturally competent care and meets the healthcare needs of residents as they define them.

**3. Recommendation: Invest in the people on the frontlines of stemming gun violence. Specifically:**

**3 (a) Recommendation:** People working as violence interrupters, credible messengers, outreach workers, and in related positions, both full-time and part-time, should receive compensation reflecting the skill and importance of their work and the dangers they may face. Manageable workloads and adequate supervision are also crucial to ensuring that individuals are supported and can be effective in their work. With input from all District agencies spearheading this type of work, and from the CBOs that undertake it, the gun violence prevention coordinator should develop compensation and staffing standards for the District. Those standards should aim for parity with other essential workers, particularly police, and consider the value of employee benefits and other incentives (e.g., paid vacation, hazard pay, housing supplements, retirement account contributions) to recruit and maintain the most capable and dedicated staff.

**3 (b) Recommendation:** Training and other learning opportunities for the growing number of violence interrupters, credible messengers, outreach workers, and related staff should be rooted in best practices and become standardized Districtwide. To this end, the gun violence prevention coordinator should build on the work begun by ONSE and seek input from other agencies to develop a dynamic, comprehensive approach to training, refine it based on experience, and provide training Districtwide with funding from the Council.

**3 (c) Recommendation:** To facilitate advanced education for those who seek it—but never as a requirement to work as a violence interrupter, credible messenger, or outreach worker—the gun violence prevention coordinator (GVPC) should partner with one or more local colleges/universities and select leading experts to establish a related course of study that results in an associate's degree. In tandem, the Council should establish a scholarship fund to offset the costs of advanced education and other professional development undertaken through this new degree program or any other relevant course of study. Furthermore, the GVPC, and more broadly the Mayor, should commit to creating a pipeline for professional advancement within the area of violence interruption and the broader fields of public safety and public health.

**3 (d) Recommendation:** In recognition of the difficulty of violence interruption and the fact that many staff on the frontlines are living with their own trauma from past exposure to violence, the GVPC should lead the development of Districtwide standards that prioritize truly effective strategies for healing and self-care. In particular, the availability of regular counseling sessions with a community-competent licensed therapist should become the norm, not action taken in the wake of a crisis on the job.

## Discussion

The expansion of violence interruption initiatives should occur in lock step with actions to better support interrupters, credible messengers, outreach workers, and other staff. Investing in this work requires investing in the people and organizations doing the work.<sup>348</sup> Such investments will become even more crucial as violence interruption initiatives expand to additional neighborhoods.

The Commission's recommendations in this regard reflect the widely shared view that people working to interrupt violence and change community norms should be treated on par with other public-facing essential workers. Like other first responders, compensation and benefits for individuals who work to interrupt violence should reflect the value of their work, the skills required, and the hazards of the job. Manageable workloads and adequate supervision and support also matter—for morale, sustainability, and the ultimate effectiveness of this work. This obviously has implications for funding; the District should not attempt to run violence interruption programs on the cheap.

With input from all District agencies spearheading this type of work, and from the CBOs that undertake and manage it day-to-day, the GVPC should develop compensation and staffing standards that apply to both salaried and hourly employees; they should consider the value of benefits and other incentives, such as paid vacation, hazard pay, housing supplements, and retirement account contributions, to recruit and maintain the most capable and dedicated staff. This is the approach to hiring police officers and teachers; the District should take the same approach to recruiting and retaining professionals on the frontlines of community safety.

The life experience, passion, commitment, and community relationships that effective violence interrupters bring to the job cannot be taught. But training in particular skills and protocols, ranging from techniques for effective mediation, to how to build trusting relationships while maintaining professional boundaries, to safety protocols—are essential. Training across the board should be rooted in best practices, be useful on the job, and once refined, become standardized throughout the District. The GVPC should spearhead this effort, building on work that ONSE has begun and soliciting additional input, and the Council should ensure there is sufficient funding for developing standardized training and providing it Districtwide.

There also should be opportunities for higher education and avenues for professional advancement for interrupters and others who want them—courses of study that will attract people to the work of nurturing community healing and safety. “If you want to get trained to do some of this work that we’re describing, there are barely any [educational] pathways,” James Forman Jr., author of the influential book *Locking Up Our Own*, told the Commission while emphasizing the need for greater investment in this area.<sup>349</sup>

As a start, the GVPC should consult with experts and partner with one or more local colleges/universities to develop a course of study that leads to an associate’s degree, and the Council should create a scholarship fund to offset the costs of any related advanced education for individuals currently working in the field of violence interruption. The administration should also take steps to create a pipeline for professional advancement within government.

Enhanced support for interrupters and other staff must also encompass the need for truly effective self-care in a very difficult profession that, by definition, relies in large part on people who carry their own traumas. While there are multiple roads to wellness, the availability of regular sessions with a licensed, community-competent therapist should become the norm, not merely the response to a crisis on the job. Commissioner Corwin Knight, founder and CEO of the Hope Foundation Reentry Network and himself a returning citizen, underscored how difficult it can be for someone in the position of helper to ask for help.

If implemented, our recommendations will not only create a stronger base of support for the people undertaking the work of interrupting violence and keeping the peace, they will also send a message that the District views interrupters, credible messengers, and allied staff as essential workers and professionals in every regard. This is an important message to send in a society prone to criminalizing innocent Black people and defining anyone with a criminal record by their past actions instead of their present contributions. How many people rushed to judgement when Cotey Wynn, a violence interrupter working with Cure the Streets, was charged with an unsolved murder? How many fewer took notice when the charges against Mr. Wynn were dismissed?<sup>350</sup>

4. **Recommendation: Invest more in community-based programs and other services that support healing and constructive life change. These programs and services should be rooted in evidence-based practice while also leveraging local knowledge and potential for innovation. They should be trauma-informed and trauma-responsive, and seamlessly connected to allied programs and initiatives, including violence interruption initiatives. This is part of strengthening the safety net for vulnerable residents, many of whom are at risk of involvement in violence. (See Section II of this report for allied recommendations.)**

**4 (a) Recommendation:** The administration, with oversight by the Council, should ensure that a majority of the funds allocated annually to operate the Building Blocks initiative flows directly to community-based organizations, which are in the best position to nurture and sustain durable gains in safety and overall community well-being.

**4 (b) Recommendation:** Subject to additional data showing positive outcomes for participants, the ONSE Pathways program should be expanded to serve more people for whom it could truly be a pathway out of violence. Such analysis should provide persuasive evidence to the administration and Council to allocate funding for strategic incremental growth of this program.

**4 (c) Recommendation:** To create reliable on-ramps to jobs in the competitive labor market for those who excel in Pathways and similar life-change programs, the Department of Employment Services must be a

core partner in the District's efforts to reduce gun violence, and the Council and Mayor should seek to expand public-private partnerships with the business community, labor unions, and nonprofit organizations.

**4 (d) Recommendation:** To be able to connect more people with healing, life-changing programs, the gun violence prevention coordinator, with funding from the Council, should oversee a competitive RFP process to identify community-based organizations that could effectively operate new or expanded programs with appropriate financial support and technical assistance.

**4 (e) Recommendation:** The Council should increase funding to the District's Collaboratives and fund other community-based organizations that are well-positioned to provide emergency financial aid to individuals and families with pressing needs that are not covered (at all or sufficiently) by core government assistance programs (e.g., an unexpected medical bill, an urgent car repair, a child in need of new shoes for school, etc.).

**4 (f) Recommendation:** The Community Advisory Group established to guide the Building Blocks initiative must be a vehicle for community members with relevant lived expertise to guide the District's efforts to stem gun violence and hold government accountable. To be effective in that regard, this group of experts must be inclusive in its composition, engage meaningfully and often with residents of communities with elevated rates of violence, and operate on par with the parallel advisory group composed of expert professionals.

## Discussion

As a District, we must do much more than stop the next shooting. As crucial as it is to mediate conflict and prevent retaliatory violence, violence interrupters are just one piece of the solution and only truly effective when they are a gateway to life-changing opportunities. All of the interrupters and several others who spoke with the Commission underscored this point. "You can build all the relationships you want, but if you can't change someone's life tangibly, it doesn't matter," said Tony Lewis,<sup>351</sup> author of *Slugg: A Boy's Life In the Age of Mass Incarceration*. Or as Commissioner Corwin Knight said, "You can only hold people for so long with motivation and mentoring."<sup>352</sup>

The comments by Mr. Lewis and Commissioner Knight are part of a virtual chorus of calls for more job training and employment opportunities, and for good reason. In keeping with a vast body of research, the Commission's analysis of DC-specific data shows a significant correlation between unemployment and gun violence. In Wards 7 and 8, which have the highest rates of gun violence, the unemployment rates are roughly 13 and 18 percent respectively.<sup>353</sup> On the other hand, the opening of one new DC business, creation of 20 jobs, each additional \$1.3 million in sales revenue, and one less business closure per census tract, are each associated with 10 fewer incidences of gun fire.<sup>354</sup>

"When I was growing up, nobody had a job because there was too much money to be made on the street. That's not true today. Young people are interested in work," Wayne Cunningham told the Commission.<sup>355</sup> He grew up in Anacostia and is one of several violence interrupters funded through ONSE.<sup>356</sup> ONSE also runs Pathways, a transitional employment program for adults age 20 to 35 with a history of criminal justice involvement (including a gun charge), some of whom are steered to the program by interrupters like Cunningham. Pathways operates with funding from and in partnership with the District's Department of Employment Services.

Pathways begins with an immersive nine-week, classroom-based program focused on core life and job skills, followed by six months of subsidized employment, and continued social and emotional support as graduates seek jobs in the competitive labor market and make other life changes. Pathways has not been formally evaluated—planned research was postponed when the program went virtual during the pandemic. But there are signs of its effectiveness. During testimony before the Council’s Committee on the Judiciary and Public Safety, ONSE Director Delbert McFadden emphasized the 43 Pathways graduates who are currently employed, 42 of them for more than six months, in jobs making from \$35,000 to \$80,000 annually—one of them working in the Mayor’s Office of Communications.<sup>357</sup>

Evaluating Pathways must be a priority, especially since there is empirical evidence that such a specialized program, using a readiness-for-change model, pays off. Roca, founded in Massachusetts and since expanded to Baltimore, is one example. Roca’s Massachusetts-based programs for young men 18-to-24 years old have an 80 percent retention rate according to data collected by Roca.<sup>358</sup> Interim findings from an independent evaluation underway suggest that 66% of graduates retained employment for at least six months, and less than 33% were convicted of any crime in the three years following their participation—a rate nearly 30 percent lower than rates reported by the Massachusetts Department of Correction; only five percent were convicted of a violent crime.<sup>359</sup>

In addition to providing job training and subsidized employment, Roca emphasizes the use of cognitive behavioral therapy (CBT), featuring a curriculum developed in collaboration with Community Psychiatry PRIDE Clinic at Massachusetts General Hospital/Harvard Medical School. According to Roca, that curriculum “addresses the specific needs of high-risk young adults, teaching them how to ‘think different to act different.’ CBT allows our young people to develop emotional literacy and overcome behavioral barriers so they can build skills and live fuller lives.”<sup>360</sup> CBT has its own substantial base of evidence showing positive impact among people involved in the criminal legal system.<sup>361</sup>

Here in DC, the Pathways program contracts with Community Wellness Ventures to provide group and individual counseling, and more recently CBT as well, tailored to meet the needs of the young men in the program. These counselors work out of offices in the Pathways building, literally embedding mental healthcare within a transitional employment program; they are also available to provide follow-up care to Pathways graduates.

Subject to additional data showing positive outcomes for Pathways participants, the program should be expanded and refined as necessary. Pathways has the capacity to enroll just 75 people annually, in three cohorts over the course of the year.<sup>362</sup> Professor Joseph Richardson, who runs the HVIP at UMD Prince George Hospital, told the Commission he would love to refer people to Pathways but there is rarely an open slot.<sup>363</sup> Collectively, the District’s five hospital-based violence intervention programs engage more than 500 people annually.<sup>364</sup>

Another problem: The District lacks reliable on-ramps to unsubsidized jobs. ONSE Director McFadden made this point during a recent Council hearing.<sup>365</sup> The Department of Employment Services (DOES) must be a core partner in the District’s efforts to build safe communities, and the Council and Mayor should work in partnership with DOES to expand partnerships with the business community, labor unions, and nonprofits. Filling this gap is something that Interim Deputy Mayor for Public Safety Roger Mitchell also emphasized in his remarks to the Commission:

We need to engage with the business community, the Black Chamber of Commerce, hotels, etc. Every business doing work with the city needs to have an on-ramp for hard to employ individuals, and we need someone to walk with them, sustained engagement, because not everyone who wants to change has the ability in the moment to change; they need some support initially. We have more vacant jobs in this city than there are unemployed individuals. Why aren’t we a fully

employed city? Why aren't we helping people acquire the skills they need to get these jobs and do well, and why aren't we developing businesses that can employ people immediately, as drivers, COVID cleaners, etc.? Employment is a huge component of violence reduction.<sup>366</sup>

Such public-private partnerships are not without precedent: Several private entities in DC provide financial and institutional support for programs and interventions designed to end homelessness, for example.<sup>367</sup>

#### *A New Era of Healing, Life-Changing Programs and Services*

Notwithstanding the potential value of expanding Pathways, the District needs additional healing, life-changing programs to reach populations that Pathways misses: somewhat younger people, for example, who may not have a criminal record but are at high risk of involvement in violence; and girls and women. Although Pathways is open to women, admission criteria are tailored to enrolling men—indeed all participants to date have been men—and young women who meet the criteria might not want to join a male-dominated program. “Our [violence interrupters] work with girls and young women all the time,” Setareh Yelle, ONSE strategy and innovation officer told the Commission.<sup>368</sup> That none of them are participating in Pathways is concerning, especially since the number of female homicide victims more than doubled over the past year, from 12 in 2019 to 29 in 2020.<sup>369</sup>

With funding from the Council, the Gun Violence Prevention Coordinator should oversee a competitive RFP process to identify community-based organizations that, with appropriate financial support and technical assistance, could operate healing, life-changing programs. Funds could be used to launch new programs, or to expand or tailor existing programs to meet the need. Overall, a majority of funds allocated annually to operate the Building Blocks initiative should flow directly to community-based organizations. CBOs are in the best position to operate these programs and to advance durable gains in community safety and overall well-being more generally. “The jewels are in the community,” as ONSE Director McFadden said.<sup>370</sup>

While these programs should be rooted in research, where possible they also should leverage local knowledge and potential for innovation. And whether the substantive focus is job training, education, or something else, services must be provided through a trauma-informed lens. “We know we need more trauma-informed mental healthcare,” Yelle, ONSE strategy and innovation officer, told the Commission.<sup>371</sup>

For younger people of color, that takes a special approach. As violence interrupter Wayne Cunningham told the Commission, “The worst thing you can say to a young person in trouble and in need is that they have a ‘mental health problem.’ There needs to be a better approach, maybe training violence interrupters to work as crisis counselors or alongside mental health professionals. They know how to engage rather than alienate people.” His suggestion reflects the level of creativity needed to help people heal.

The Commission also calls on the Council to increase funding to the District’s Collaboratives and fund other community-based organizations that are well positioned to provide emergency financial aid to individuals and families with pressing needs not covered (at all or sufficiently) by core government assistance programs (e.g., an unexpected medical bill, an urgent car repair, a child in need of new shoes for school, etc.). Research shows that timely financial assistance can help stabilize peoples’ lives in ways that can prevent violence,<sup>372</sup> just one reason among many to expand emergency financial assistance. To qualify, CBOs must have systems in place to act within 24 hours or less and to directly pay for eligible emergency expenses.

Greater investment in community-based solutions to gun violence must occur in partnership with directly impacted communities.<sup>373</sup> One obvious way to deepen those partnerships—and mine the lived expertise of residents—is through the Community Advisory Group established to guide the Building Blocks initiative. This group should operate on par with the parallel advisory group composed of expert professionals. It should be truly inclusive in its composition, with some members who care deeply about these issues and are directly impacted, in some cases as survivors of violence, but who are not already recognized leaders known to government. The Community Advisory Group should routinely inform and solicit feedback and ideas from a wide range of residents, regularly brief the GVPC and City Administrator, and host at least one public meeting annually where residents can speak directly with these and other senior officials, as a way of holding government accountable.

- 5. Recommendation: The District should partner with a local university to establish a state-of-the-art research center to advance public health-centered, trauma-informed solutions to gun violence. The Council and Mayor should lead this effort.**

## Discussion

Public investments in building safer communities should be informed by knowledge about the nature of the problems society is confronting and what works best to address them. On gun violence, the base of knowledge on both sides of the equation is not as developed as it needs to be. For more than 25 years, federal funding for gun violence research has been hampered by the Dickey Amendment, a rider that was inserted into the 1996 Omnibus Consolidated Appropriations Bill for Fiscal Year 1997 that mandated, “none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention (CDC) may be used to advocate or promote gun control.”<sup>374</sup> Although the FY 2020 federal budget included \$25 million for the CDC and the National Institutes of Health to research gun-related deaths and injuries,<sup>375</sup> this is a small fraction of what is needed to better understand a problem that affects over 115,000 people in America every year,<sup>376</sup> including more than 500 people in DC.<sup>377</sup>

The District lacks robust evidence of the local impact of interventions to stem gun violence—efforts with evidence behind them from other jurisdictions that range from neighborhood-based violence interrupters to extreme risk protection orders.<sup>378</sup> In addition to evaluating what is already in place, the District should be taking steps to bring the most promising practices to DC; contribute to advancing knowledge through study of the root causes of gun violence and its consequences; and be on the vanguard of emerging practice by pilot-testing innovative interventions, many of which are likely to emerge from DC communities.

In sum, it is time to take a more proactive and strategic approach to research as part of a long-term investment in building safer communities. The District needs to do this for the good of its own residents, and as the nation’s capital, DC should be a national leader in this regard. Several councilmembers signaled the importance of research a couple of years ago when they introduced the “Center for Firearm Violence Prevention Research Establishment Act of 2019,” a bill that unfortunately did not receive the attention it deserved.<sup>379</sup> We urge the Council to revisit and refine that legislation with the goal of partnering with a local university to establish a state-of-the-art research center specifically to advance public health-centered, trauma-informed solutions to gun violence.

The District is home to several universities, any of which could be a fantastic partner in this endeavor and could dramatically expand the District’s ability to fund and carry out rigorous research. Such a center should focus on topics and areas of practice relevant locally and nationally and adhere to the basic tenets of community-based participatory research to the extent feasible.<sup>380</sup> Subcontracts and grant awards should be open to any qualified investigator regardless of institutional affiliation and undertaken through a transparent, competitive process. In

tandem with co-founding the research center, the Council and the Mayor must ensure that related District agencies (e.g., MPD, ONSE, Office of the Attorney General, OVSJG, Department of Behavioral Health, etc.) have the capacity internally to collect—and are required to provide—the operational data necessary to support robust research.

# Section V: Embracing a Harm-Reduction Approach to Policing

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## OVERVIEW

Police should be one force among many that prevent harm—physical and emotional harm to people and damage to property. One of the challenges facing MPD and law enforcement agencies nationwide is to minimize the potential for their own officers to inflict harm. Through its policies and practices, MPD must actively prevent both police violence and unnecessary intrusions on people’s freedom. Everything MPD does must start from the premise that everyone has fundamental rights to autonomy, privacy, dignity, bodily integrity, and safety.

Following from these principles, MPD and its officers should not use enforcement strategies and tactics simply because they can; they should do so only when reliable evidence establishes that such strategies and tactics effectively address serious crime, help preserve the sanctity of human life, foster community trust, and treat all people fairly in the context of a criminal legal system rife with racial disparities. In other words, MPD officers must be animated not by what they *can* do as a matter of law, but rather by what they *should* do as a matter of smart, evidence-informed public policy; and it’s the responsibility of the department to establish the rules of engagement. MPD recognizes this imperative explicitly in its [Mission and Value Statement](#), and implicitly in certain policies that require more than the constitutional minimum.

Stops, searches, and arrests by MPD officers must be lawful beyond any doubt. But because these actions are inherently repressive and distressing, they must also be verifiably *effective* at addressing violent and otherwise serious crime and as *minimally intrusive* as possible. Similarly, MPD officers must actively seek to de-escalate encounters that present a threat of violence, and when left with no option other than to use force, must use only what’s necessary, reasonable, and proportional to the threat posed. The upshot is that lawful police behavior is not enough: MPD must take care to ensure that the benefits of every stop, search, arrest, and use of force outweigh the anguish such encounters cause—that, in every encounter, officers are doing more good than harm.

An integral part of an effective harm-reduction approach to policing is rigorous data collection and analysis. MPD must collect, maintain, and routinely analyze data on its officers' encounters with the people who live in, work in,

and visit the District. The department needs data to understand the impact of and refine its policies and practices to ensure that they meaningfully address crime, genuinely protect residents, and effectively build community trust. The department also needs data for supervisors to intelligently hold officers accountable for following policy—to reward good performance, correct deficient performance, and refer violations for disciplinary action. Moreover, District residents have a right to make their own determinations about MPD’s performance based on the same data, and a corresponding right to hold MPD accountable when its officers unjustifiably inflict harm. (See Section VIII of this report for the Commission’s recommendations for improving accountability.)

An equally integral part of an effective harm reduction approach to policing is fairness and impartiality. Police agencies have a long history of discriminating against and traumatizing people of color, in particular Black men and boys, and increasingly Black women and girls, as well as LGBTQ+ individuals. MPD is no exception. Although the department has made strides toward eradicating deleterious, discriminatory policing practices over the past two decades, its work is far from complete. Statistical and experiential evidence of officers’ stop and search practices, discussed below, exposes the still difficult road ahead.

Certain law enforcement practices will move MPD closer to the harm reduction objectives identified above, while other practices will make achieving those objectives either impossible or exceptionally difficult. The following key recommendations encourage the Council and MPD to adopt the former and end the latter:

- ☒ Suspend certain specialized MPD units that use aggressive stop and search tactics unless and until the department produces data showing these units address violent and otherwise serious crime more effectively than ordinary patrol units; and simultaneously explore expansion of the use of person-based focused deterrence.
- ☒ Ban “jump-outs.”
- ☒ Allow pretext stops—stops legally justified for minor offenses but in fact made to investigate more serious offenses—only with supervisory approval and only to investigate crimes of violence.
- ☒ Transfer authority to enforce traffic violations that do not imminently threaten public safety from MPD to the Department of Transportation.
- ☒ Prohibit consent searches, given that residents, especially in over-policed communities, rarely feel free and safe to make a voluntary choice.
- ☒ Modify search warrant execution practices by banning no-knock warrants; requiring officers to exercise diligence to ensure that they have the right address; requiring officers to comply with constitutional requirements for patting down and searching occupants; and authorizing prompt compensation for damage to property.
- ☒ Establish a presumption of citation in lieu of arrest for low-level offenses.
- ☒ Require more extensive training for the District’s thousands of special police officers and disarm non-DCHA special police officers in public housing.
- ☒ Significantly enhance data collection and reporting practices for stops, protective pat-downs, searches, search warrants, and canine use and make all data easily accessible to the public.

The Commission had neither the time nor the authority (e.g., no subpoena power) to conduct a full inquiry into MPD practices. Moreover, despite repeatedly asking MPD for information about various practices, the Commission received little of what it sought. Depending on the request, MPD claimed that it either lacked the capacity to respond or did not maintain the information requested. For these reasons, the recommendations here should not be viewed as comprehensive.

While greater transparency by MPD might well spawn calls for additional reforms, this improved transparency is urgently needed in its own right, as the final key recommendation above makes clear. The public has a right to understand exactly what MPD is doing and why. The department's legitimacy in the eyes of District residents depends on it.

[L]awful police behavior is not enough: MPD must take care to ensure that the benefits of every stop, search, arrest, and use of force outweigh the anguish such encounters cause--that, in every encounter, officers are doing more good than harm.

## Recommendations

### I. CONDUCTING LAWFUL, EFFECTIVE, HARM-MINIMIZING STOPS, PAT-DOWNS, AND WARRANTLESS SEARCHES

When police officers stop and search someone on the street, or pull over and search someone driving a car, they are doing something that is inherently intrusive and intimidating. Especially when officers conduct stops and searches unlawfully or unfairly, they erode police legitimacy and undermine community trust in policing. As MPD itself maintains in its recent announcements releasing stop data from the first half of 2020, a harm reduction approach to policing means that, when MPD officers conduct stops and searches, they are required not only to obey the law, but also to seek to address criminal activity that presents a genuine threat to public safety. The following recommendations seek to minimize the harm and maximize the effectiveness of MPD's stop and search practices.

1. **Recommendation:** MPD should suspend Crime Suppression Teams (CSTs) and the Gun Recovery Unit (GRU)—specialized units that utilize aggressive, confrontational tactics more likely to result in unwarranted stops, searches, arrests, and uses of force, including potentially lethal force—until: (1) MPD produces data that establishes the scope and impact of the practices of these units and proves that these units are more effective than ordinary patrol units in addressing serious crime in a lawful manner; and (2) an outside, independent analysis shows the same. If such analyses justify the re-activation and continued use of CSTs, the GRU or both, then MPD must regularly assess the tactics utilized by these units to ensure that they comply with law and policy, effectively combat serious crime, and foster police legitimacy and community trust.

In parallel, MPD should enhance the use of person-based focused deterrence as a more targeted, more effective, less harmful strategy for reducing gun violence, and one with significant research behind it. MPD should pursue this work in close partnership with the District's Gun Violence Prevention Coordinator.

### Discussion

MPD's Crime Suppression Teams (CSTs) are units within each patrol district devoted to deterring and ferreting out criminal activity. Unlike patrol officers, CST officers do not routinely respond to calls for service. CST officers are also less integrated into the patrol unit structure and thus operate with less oversight.

MPD's Gun Recovery Unit ("GRU") is a specialized unit within the Narcotics and Specialized Investigations Division ("NSID"). As its name suggests, it is devoted to combating gun crime. To become a GRU officer, an MPD member must go through a competitive selection process. GRU officers operate with purportedly strict oversight within NSID.

Typical of "proactive policing" units in other departments, CSTs and GRU use aggressive stop, pursuit, and search tactics that bump up against—and sometimes cross—constitutional boundaries. Even when lawful, these tactics are inherently invasive. They can also rapidly escalate and lead to police violence. The recent deaths of Deon Kay and Karon Hylton resulted from encounters initiated by CSTs. Emblematic of the "warrior" model of policing, CST and GRU tactics can readily undermine police legitimacy and erode community trust. This is especially true because CSTs and GRU ordinarily deploy such tactics in Black neighborhoods, with racially disparate effects. In a well-known incident from the summer of 2017, a group of GRU officers was pictured in front of an ominous logo that featured a skull and crossbones with a bullet hole in the forehead, guns, handcuffs, and the words "NSID-Gun Recovery Unit-Washington DC" and "Vest Up One in the Chamber"—a mantra to put on a bulletproof vest and be prepared to shoot.

Despite the harm they can inflict, MPD has never analyzed whether CSTs and GRUs effectively reduce crime, particularly violent crime, better than ordinary patrol units; nor has MPD ever audited whether these units use their tactics in a manner that complies with law and policy. In fact, MPD does not even collect the data needed to conduct these assessments. Because CST and GRU tactics can be repressive, dangerous, and corrosive to MPD's legitimacy, MPD should suspend CSTs and GRU until it establishes, through rigorous data collection and analysis, whether they perform their duties lawfully and whether they are effective at accomplishing their purpose.

Police agencies have a long history of discriminating against and traumatizing people of color. Although [MPD] has made strides toward eradicating deleterious, discriminatory policing practices over the past two decades, its work is far from complete.

At the same time, MPD should explore less harmful means of addressing violent crime that have proven effective. One such method is focused deterrence. Focused deterrence is a crime prevention strategy that targets a specific type of crime prevalent in a particular geographic area by directly engaging high-risk offenders, providing them intensive social services if they cease offending, and swiftly prosecuting them if they do not. Focused deterrence is based on research showing that violent crime is often concentrated among a small number of individuals who are highly active in a specific area and is not displaced to other areas. A 2019 review of 24 different studies of focused deterrence programs around the country found that 91% showed statistically significant reductions in violent crime. Even when controlling for research design and publication, most of the studies showed that focused deterrence works.<sup>381</sup>

To effectively implement focused deterrence, MPD should engage in robust, transparent, and collaborative outreach to communities where gun violence is the worst; work regularly with agencies across the District to problem-solve and strategize as issues arise; train officers on focused deterrence; and ensure that social services provided to people at high risk of engaging in gun violence account for their needs. MPD can consult examples such as the Cincinnati Initiative to Reduce Violence to see how to successfully partner with community organizations and social service providers to address individual needs.<sup>382</sup>

2. **Recommendation: Unless conducting an authorized undercover operation, on-duty officers who work the street and are not plainclothes detectives, including members of all specialized units who work the street, should be readily identifiable as police officers, with names and badge numbers visible on their uniforms (including service uniforms, soft “BDU” uniforms, and casual clothes), and in marked police cars.**

## Discussion

To maintain their legitimacy, police officers must be accountable to the people they serve. Officers from specialized enforcement units who are on the street in clothing without visible names and badge numbers and who travel in unmarked cars are unaccountable because they are unidentifiable. Professor Sean Kennedy, a member of the Los Angeles County Sheriff Civilian Oversight Commission, observed, “You should be able to know the name of a deputy who you interact with. There’s no way that we can effectively monitor law enforcement if you can’t even get the name of a deputy that you’re interacting with in public who has taken some kind of use of force or action against you.”<sup>383</sup>

Because they are unaccountable, officers who stop people on the street in clothing that does not display identifying information drive a wedge between themselves and the community. They present as a part of an anonymous occupying force as opposed to recognizable public servants. They also create a heightened risk of violence, as civilians are less likely to recognize them as police officers and more likely to defend themselves in the face of perceived aggression. Other large cities have moved away from using plainclothes officers. New York Police Commissioner Dermot Shea, who disbanded plainclothes units responsible for a disproportionate number of officer-involved shootings, maintains that “the plainclothes units were part of an outdated policing model that too often seemed to pit officers against the communities they served . . . they were involved in a disproportionate number of civilian complaints and fatal shootings by the police.”<sup>384</sup> Last year, the Baltimore Police Department similarly required officers from its District Action Teams—proactive policing units similar to MPD’s CSTs—to wear uniforms and work in marked cars.<sup>385</sup>

At times, MPD officers from specialized units may work the street in casual clothes or soft uniforms. For these officers, MPD must ensure that, at all times, their identifying information is fully visible and that they travel in marked cars. MPD should update General Orders 110.11 (Uniform, Equipment, and Appearance Standards) and 308.13 (Casual Clothes Units) accordingly. This is consistent with the recommendation made by the National Police Foundation after its recent, limited analysis of NSID unit activity.<sup>386</sup>

3. **Recommendation: MPD officers may make stops only when both lawful and verifiably effective at addressing serious crime; must conduct stops in a fair and impartial manner that exhibits restraint and promotes police legitimacy; and must document the facts justifying stops with specificity and without resort to boilerplate language. Specifically:**

**3 (a) Recommendation:** The Council should prohibit the practice of officers exiting marked or unmarked cars to question, pat-down, or search people, including by asking them to lift their shirt and show their waistbands (sometimes called “jump outs”). To reinforce this prohibition, MPD should amend General Order 304.10 (Field Contacts, Stops, and Protective Pat Downs) and deliver training.

**3 (b) Recommendation:** The Council should prohibit the following from factoring in to whether reasonable articulable suspicion (“RAS”) for a stop exists:

- a. Presence in a “high crime area” or any other geographic location, including a specific location (e.g., a corner, outside a particular building, or a section of a park).
- b. Nervousness in the presence of law enforcement.
- c. The race, ethnicity or gender of a person, unless accompanied by additional, particularized information from a trustworthy source about the suspect’s description, the suspect’s location, and the time of observation of the suspect.
- d. “Furtive” gestures or movements, unaccompanied by a more specific description of what the officer observed and why the officer believed it was suggestive of criminal activity.
- e. Response to the presence of police, including attempts to avoid contact with an officer (e.g., declining to talk, walking away, or running away).
- f. A generic “bulge in clothing,” unaccompanied by a more specific description of what the officer observed and why the officer believed it was a dangerous weapon.
- g. Time of day, unless accompanied by other facts establishing RAS.

**3 (c) Recommendation:** MPD should modify General Order 304.10 and corresponding training to expressly (1) require officers to document the specific, individualized facts justifying stops and protective pat-downs; and (2) prohibit officers from using the following boilerplate language, unaccompanied by additional specific facts, when documenting the factual justifications for stops and protective pat-downs:

- a. “Bulge in clothing”
- b. “Characteristics of an armed person”
- c. “For officer safety”
- d. “Knowledge, training and experience”
- e. “Matched description”

### **Discussion**

The Constitution and MPD policy authorize officers to stop, briefly detain and question an individual based on reasonable suspicion that the individual has committed, is committing, or is about to commit a crime. The reasonable suspicion standard for stops is less stringent than the probable cause standard for arrests. Nevertheless, officers sometimes make stops without articulable facts that establish reasonable suspicion. They also sometimes justify stops that are based on illegitimate “facts” and observations and that lack reasonable suspicion for that reason.

Certain facts, such as “nervousness,” are subjective, manipulable, and above all describe every individual’s natural reaction to police contact. Being nervous when approached by police is not indicative of criminality, particularly in Black communities that have a history of negative experiences with police.<sup>387</sup> Other facts, such as avoiding contact with an approaching officer, are also not necessarily indicative of a guilty mind and instead might simply reflect an innocent person’s desire to avoid previous adverse experiences the person has had or believes other innocent people have had.<sup>388</sup> Still other facts, such as presence in a “high crime area,” or fitting a generalized description applicable to wide swaths of people (e.g., “Black male wearing a hoodie”), result in the illegitimate criminalization and racially discriminatory treatment of entire neighborhoods and entire groups of people.<sup>389</sup> And observations such as “furtive gestures,” unaccompanied by more particularized facts, are irredeemably subjective, overly general, and potentially the product of implicit racial bias. A harm reduction approach to policing means that none of these facts should be invoked to establish reasonable articulable suspicion for a stop.<sup>390</sup>

Stops made without legitimate supporting facts are unjustifiably intrusive, tense, and stressful.<sup>391</sup> If made often enough in a particular community, as was the case in certain New York City neighborhoods during NYPD’s “stop and frisk” era, these stop practices spawn something akin to a police state—and a racially discriminatory one at that. Research also shows that pervasive stop practices have criminogenic effects, particularly on youth in heavily policed communities. For youth, in other words, police contact makes future unlawful behavior more likely, not less likely.<sup>392</sup>

Even when officers make stops on legitimate grounds, they sometimes fail to properly document their reasons. Inadequate documentation of warranted stops makes police work less transparent and less justifiable; it also jeopardizes valid criminal prosecutions.

MPD’s stop practices have met with criticism in recent years. Certain units, including CSTs and GRU, are known as “jump out squads” because of their unlawful tactic of rolling up on people—without the required reasonable suspicion—to surround them, question them, demand that they show their waistbands, and/or search them.<sup>393</sup> While MPD has often denied that its officers perform jump-outs or “stop-and-frisk,” there is evidence to the contrary. Community members have long described their experiences with the practice. Notoriously, in the summer of 2017, a Seventh District officer appeared several times in court and in the community wearing a black t-shirt that featured the Grim Reaper with an MPD badge and the words “Powershift,” “Seventh District,” and “***Let me see that waistband jo***” —a clear reference to jump-outs.<sup>394</sup> As recently as January 2020, an MPD sergeant’s testimony before the Council corroborated community member observations that the practice is still alive and well.<sup>395</sup> A federal lawsuit filed in June 2020 makes similar claims.<sup>396</sup> And the National Police Foundation’s recent report on MPD’s NSID units specifically recommends that MPD “require each casual clothes unit to be easily identifiable as MPD officers ***when conducting jump outs*** or tactical missions that are likely to result in conducting arrests.”<sup>397</sup>

Because MPD delayed complying with its statutory obligation to collect and publish data on stops for nearly three years, MPD’s existing data on stops remains somewhat limited. Until late February 2021, available stop data covered only a five-month period, from July 22 through December 31, 2019. On February 22, 2021, however, MPD published stop data for the first six months of 2020 (January 1 through June 30). Then, on March 5, as this report was being finalized, MPD published stop data for July 1, 2020 through December 31, 2020. Thus, at this point, MPD has made roughly a year and a half of stop data available.

These data are sobering.<sup>398</sup> They show the following:

- ☒ In the first reporting period, July 22 to December 31, 2019, MPD officers conducted 62,842 pedestrian and traffic stops—that’s one stop every three minutes and 45 seconds. During the second reporting period, covering the first six months of 2020, the number of stops diminished by about one-third to 47,605. In the final reporting period, covering the second half of 2020, the number of stops declined again, to 33,093. (The reductions in 2020 were likely due, at least in part, to the COVID-19 pandemic, which kept more people inside and restricted MPD street activity to a degree.)
- ☒ For the 17-month-plus period from July 22, 2019 to December 31, 2020, Black people made up 86.2% of non-traffic stops and 76.4% of all stops. Black people, however, comprise a much lower percentage of the District’s population—46%. Moreover, the percentage of Black people subjected to non-traffic stops in each police district has been higher than the Black percentage of the population there, with especially pronounced disparities in predominantly White districts. For instance, in the Second District, which is 7.5% Black, 64.5% of non-traffic stops were of Black people. The following chart shows, in each district, the percentage of non-traffic stops of Black people compared to the percentage of the population that is Black.

<u>Police District</u>	<u>% Stops Black</u>	<u>% Black Population</u>
1	86.9%	26.8%
2	64.5%	7.5%
3	75.9%	26.7%
4	74.8%	51.6%
5	90.3%	64.9%
6	96.4%	92.8%
7	97.3%	89.4% <sup>399</sup>

What this means is that disparities in non-traffic stops do not arise simply from greater MPD presence in predominantly Black districts. (While the figures are similar for traffic stops, we focus on non-traffic stops because they are more prone to constitutionally questionable conduct: non-traffic stops are typically based on weaker evidence of a violation of law and are more susceptible to racial considerations, as officers can more easily discern an individual’s race from the street than through a car window.)

- ☒ From July 22, 2019 to December 31, 2020, the vast majority of stops that did not result in a warning, ticket, or arrest—in other words, the vast majority of stops of innocent people—were of Black people. Specifically, 86% of all stops that did not result in a warning, ticket, or arrest were of Black people. Perhaps more troubling, innocent Black people were almost three times more likely to be stopped than innocent White people: 23% of Black people stopped were not warned, ticketed, or arrested, compared to 8% of White people and 15% of Latinx people. In the first reporting period, according to a similar analysis conducted by the ACLU-DC, the stops that did not result in a warning, ticket, or arrest cost taxpayers a collective 3,860 hours of officer time.<sup>400</sup>
- ☒ Despite MPD’s often-cited gun violence-reduction justification for its stop practices (particularly its non-traffic stops), only 0.8% of all stops and 1.8% of all non-traffic stops led to the recovery of a gun between July 31, 2019 and December 31, 2020.

The upshot is that MPD appears to be making a high number of stops that are not proving effective at ferreting out serious crime, including gun crime. At the same time, these stops are disproportionately affecting Black people across the District, even in non-Black neighborhoods west of the Anacostia River. As the ACLU-DC maintained after the first stops reporting period (July 22 to December 31, 2019), “Black people make up the majority of people subjected to the most questionable stops, the disparities persist throughout the District, [and] the disparities are even larger in a setting, non-traffic stops, where an individual’s race is more observable...”<sup>401</sup>

By calling out and expressly banning jump-outs, which are both illegal and corrosive to MPD’s legitimacy, the Council and MPD can reinforce the importance of moving toward a harm reduction approach to policing. And if MPD’s periodic claim that its officers no longer conduct jump-outs is true—despite the evidence to the contrary—then an explicit prohibition would be painless to MPD, while very meaningful to District residents.

By prohibiting MPD officers from relying on certain illegitimate facts to meet the reasonable suspicion standard, MPD will ensure that its officers do more good than harm. Stopping people based on facts that are nebulous, subjective, or that could justify stopping just about anyone, is toxic to community trust. Putting an end to these stops can help restore that trust. The MPD commander who attended several Commission meetings indicated that she did not object to prohibiting officers from relying on some of these facts to conduct stops.

Finally, by requiring officers to write stop reports using a precise description of the facts giving rise to “reasonable suspicion,” MPD can reinforce the importance of complying with the standard for stops and compel officers to think carefully before intruding on someone’s liberty.

- 4. Recommendation: MPD should prohibit pretext stops—stops legally justified for lesser offenses (e.g., traffic violations, crowding/obstructing/ incommoding) but in fact made to investigate more serious offenses—unless an officer obtains supervisory approval and the reason for the stop is to investigate a “crime of violence,” as defined in DC Code 23-1331.**

## Discussion

In *United States v. Whren* (1996), the U.S. Supreme Court ruled that pretext stops do not violate the Fourth Amendment’s prohibition on unreasonable seizures. The practical effect of *Whren* has been to give police officers effectively unchecked discretion to stop anyone they want at any time, particularly for a traffic infraction, which most drivers routinely commit. *Whren* has broadly condoned inherently stressful and degrading police intrusions that do not actually target the offenses (typically traffic infractions) that justify them, but instead target crimes for which police have no evidence. It has often justified such intrusions—in reality, fishing expeditions—to investigate non-violent drug crimes, as opposed to crimes of violence.

Although the *Whren* ruling cautioned that stops animated by race remain prohibited by the Fourteenth Amendment’s equal protection guarantee, in practice *Whren* has legitimated racial profiling—stops for driving, walking, or simply living “while Black” —because racial motives are so hard to prove. An officer can stop a Black person for, say, a broken taillight, hoping instead to investigate a drug crime that he has zero reason to suspect other than the person’s race. *Whren* has had particularly harmful repercussions for Black individuals and communities.<sup>402</sup>

Even worse, the purported law-enforcement benefits wrought by pretext stops have never justified the significant costs: data have not proven that pretext stops for low-level offenses have meaningfully addressed serious crime,

including violent crime. Predictably, because of all the unwarranted harms they produce, pretext stops undermine police legitimacy and thwart beneficial police-community relations.<sup>403</sup>

Recognizing the problems with pretext stops, some jurisdictions have scaled back. For years, by virtue of court rulings, the states of Washington and New Mexico have banned pretext stops, with no discernible impact on crime.<sup>404</sup> More recently, the Oregon Supreme Court similarly prohibited pretext stops.<sup>405</sup> Prosecutors' offices in Washtenaw County (Michigan)<sup>406</sup> and San Francisco<sup>407</sup> now refuse to prosecute a contraband crime when there is a significant reason to believe that the charges arose from a pretext stop. Certain police agencies require supervisory approval for conducting pretext stops.<sup>408</sup> Others now prohibit pretext stops for certain offenses. For instance, the Baltimore Police Department has a policy that forbids pretext stops for loitering and trespassing—two common misdemeanor offenses that have historically been used to justify ineffectual over-policing in certain principally Black neighborhoods.<sup>409</sup>

MPD should follow the lead of these jurisdictions and authorize pretext stops only when (1) approved by a supervisor, and (2) the actual reason for the stop is to investigate a violent crime, as defined by the DC Code. By continuing to allow pretext stops for known violent crimes under investigation and for specific individuals suspected of such crimes, while prohibiting them for non-violent crimes (including drug possession), this policy will focus MPD's finite resources on violent crime, where they belong; will curtail racial profiling; and will help foster improved community relations.

5. **Recommendation:** To focus law enforcement resources on offenses that imminently threaten public safety, the Council should eliminate MPD's authority to enforce certain traffic and vehicle regulations and narrow its authority to enforce others.

**5 (a) Recommendation:** The Council should transfer from MPD to the Department of Transportation ("DDOT") the authority to enforce traffic and vehicle regulations whose violation does not imminently threaten public safety. Correspondingly, the Council should require DDOT to hire and train qualified employees to properly enforce such regulations.

**5 (b) Recommendation:** The Council should prohibit traffic stops—whether by DDOT or MPD—based solely on the alleged violation of vehicle operation infractions that are not an immediate threat to public safety (though violations could be charged in connection with either a collision or a stop based on another infraction).

**5 (c) Recommendation:** The Council should require either repeal or revision of traffic and vehicle regulations whose violation does not threaten public safety.

**5 (d) Recommendation:** The Council should prohibit MPD from conducting Traffic Safety Compliance Checkpoints (see MPD General Order 308.03), except in response to repeated community complaints about particular traffic violations that pose an imminent threat to public safety.

## Discussion

Law enforcement officers have traditionally policed violations of traffic laws, including minor infractions that do not imminently threaten public safety. In recent years, this practice has begun raising questions. One question is

about the efficient use of resources: as cities like the District continue to grapple with serious crime, should police agencies be enforcing civil traffic laws, or should they instead devote their finite human resources to addressing serious crime? Another question is about the cost of compromising freedom and risking safety: Should officers keep using minor traffic violations as a pretext to investigate more serious offenses when that practice—which, as explained above, is ineffective at stopping crime—rarely justifies the resulting infringement on liberty and the potential for sudden violence? A third and related question is about racial equity: should police continue to enforce minor traffic regulations when evidence routinely shows that such enforcement disproportionately and unfairly targets people of color?<sup>410</sup> Another key question concerns the financial impact of fines for minor violations on District residents—particularly poorer residents who often cannot afford to pay and who, under current District law, are prohibited from renewing their driver’s licenses (essential for so many daily activities, including transportation to work) for traffic debts of over \$100.

Increasingly, these questions are being answered with proposals for an alternative enforcement model: while police should continue to be empowered to stop motorists for violations that pose an immediate risk to traffic safety (e.g., reckless driving), the authority to enforce minor regulations should be removed from the police and transferred to another agency whose employees can be trained in traffic enforcement. In February 2021, the District Task Force on Jails and Justice advanced such a proposal.<sup>411</sup> Last year, the well-regarded non-profit The Justice Collaborative made a similar proposal.<sup>412</sup> And Berkeley, California recently passed a law limiting police authority to conduct traffic stops for minor infractions.<sup>413</sup>

The Commission’s recommendations here follow suit. By transferring enforcement authority for infractions that do not imminently threaten public safety from MPD to the Department of Transportation—while ensuring that DDOT hires and properly trains employees to assume such responsibilities—the Council could focus MPD resources on true criminal conduct and simultaneously prevent the harms that flow from police-initiated traffic stops. The following are examples of regulations whose enforcement should be transferred from MPD to DDOT: Window Tint Prohibition (DC Code § 50-2207.02(c)); General Mechanical Issues(18 DCMR § 600.2); Driving with Improper Fenders/Bumpers (18 DCMR §§ 733.1-3, 733.5-6); Riding PMD/Bicycle on Sidewalk in Central Business District, Excessive Smoke (18 DCMR § 750.3); and Bad Foot and Hand Brakes (18 DCMR §§ 720.2, 720.4). The Council should undertake a comprehensive review of District regulations regarding civil traffic and vehicle infractions to determine which ones should be enforced by DDOT.

Certain regulations, while valid, do not address conduct that is sufficiently dangerous to justify a stop, though a violation could be charged in connection with a collision or a stop based on another infraction, either by DDOT or MPD. (See Recommendation 5.2.) Regulations that fit this category include Improper Bicycle Safety Equipment (18 DCMR § 1204); Safe Operation of Bicycles and Motorized Bicycles (18 DCMR §§ 1201.1, 1201.4-1201.8); Light Violations (18 DCMR §§ 703-706); Fenders Removed (18 DCMR § 733.4); Operating Unregistered (18 DCMR § 411.1); Loud Horns (18 DCMR § 730.2); and Improper Riding (18 DCMR §§ 2213.1, 2213.4-2213.6). There are others. In its comprehensive review of District regulations regarding civil traffic and vehicle regulations, recommended above, the Council should seek to identify additional regulations that do not, on their own, justify a traffic stop.

Finally, regulations that do not genuinely address public safety should be repealed or, if legitimate but overbroad, revised. Examples of regulations that should be repealed include “operating a personal mobility device with ears covered,” and “distracted driving.” No matter which agency enforces them, these regulations are vague and

unnecessary, yet are too frequently enforced. An example of a regulation that is overbroad is littering from a vehicle (18 DCMR § 2221.6), which should be limited to circumstances that endanger other people.

In sum, the Council should carefully examine the District's traffic and vehicle regulations and allocate enforcement authority in a way that channels MPD's resources toward genuine threats to public safety, restricts MPD's power to conduct pretextual traffic stops, and substantially entrusts traffic enforcement to DDOT.

**6. Recommendation: In the interest of both public safety and harm prevention, the Council should strictly limit vehicle pursuits.**

**6 (a) Recommendation:** The Council should make it unlawful for police officers to engage in vehicle pursuits except where: (a) the officer reasonably believes that failure to apprehend the fleeing suspect places another person in immediate danger of death or serious injury; *and* (b) pursuit will not endanger any person other than the fleeing suspect.

**6 (b) Recommendation:** The Council should make it unlawful for police officers (a) to intentionally use their vehicles to contact a fleeing vehicle, including by ramming, roadblock, boxing in, or any other means; or (b) to attempt to force a fleeing vehicle into another object or off the road.

### **Discussion**

Vehicle pursuits are inherently dangerous and can be fatal. According to a National Highway Traffic Safety Administration (NHTSA) report, “[a]t least 1,594 deaths in police chases occurred from 2014 through 2017 — an average of 399 a year. That’s the largest four-year total since NHTSA began tracking fatal vehicle crashes in 1979. Nearly 300 of those killed from 2014 through 2017 were bystanders.”<sup>414</sup> According to John Firman of the International Association of Chiefs of Police, a 2015 “survey of 17,000 chases nationally since 2001 shows that 92% began for a traffic violation, misdemeanor or non-violent felony such as car theft.”<sup>415</sup>

Because of the serious danger that vehicle pursuits pose, police departments across the country now strictly limit them to situations involving fleeing suspects who pose an immediate risk of killing or injuring another person. Police departments also strictly forbid intentionally using police cars to obstruct or stop fleeing vehicles.

MPD is no exception. Current policy, General Order 301.03, permits vehicle pursuits only in extremely limited circumstances. It also forbids officers from intentionally using their vehicles in ways that can cause harm. However, recent incidents raise concerns about whether MPD officers adhere to these restrictions. In October 2020, Karon Hylton died when his moped crashed into another car as officers chased him.<sup>416</sup> In May 2018, Jeffrey Price died during an alleged police chase when his dirt bike crashed into an MPD cruiser that had pulled into an intersection.<sup>417</sup> The Commission heard from Mr. Price’s uncle, Jay Brown, who recounted evidence gathered in support of a civil suit brought by Mr. Price’s family.

The Council should reinforce MPD policy by expressly making it unlawful to engage in vehicle pursuits unless certain narrowly defined conditions are met. District law should be clear that a vehicle pursuit is prohibited unless it won’t endanger innocent people and there is probable cause to believe that the fleeing suspect has committed a serious violent crime and poses an immediate threat of death or serious injury to someone else. Similarly, the law should be clear that officers may not use their vehicles to intentionally contact fleeing vehicles or attempt to force fleeing vehicles into another object or off the road.

7. **Recommendation:** MPD should modify Section II.C. of General Order 304.10 to clearly and unequivocally explain that, to justify a protective pat-down, which involves an officer running their hands over a person's outer clothing, the officer must have reasonable articulable suspicion ("RAS") that the person (1) has committed, is committing, or is about to commit a crime; *and* (2) is armed with a weapon and dangerous. MPD also should provide all officers and recruits with immediate in-service training on this constitutional requirement and should hold officers accountable for documenting the facts necessary to support their RAS that an individual is involved in criminal activity, armed, and dangerous.

## Discussion

Under the Fourth Amendment, a protective pat-down for a weapon is permitted when an officer has reasonable articulable suspicion that a person: (1) has committed, is committing, or is about to commit a crime; (2) is armed; *and* (3) is dangerous. MPD General Order 304.10 and associated training curricula do not make clear that all three requirements must be satisfied before an officer may conduct a pat-down. The policy could be interpreted as authorizing a stop and pat-down based on reasonable suspicion that a person is armed, even if an officer does not have reasonable suspicion that the person is involved in a criminal activity or poses a danger. Because a qualified person in the District may carry a concealed weapon with a permit, a person is not automatically committing a crime or necessarily dangerous if they have a gun. Nor are they committing a crime or dangerous if they have another weapon, such as a pocket knife.

MPD should amend its policy to comply with constitutional requirements. It should also modify its recruit and in-service training accordingly. The existing loose policy language may lead officers to conduct stops and pat-downs that are both unwarranted and unconstitutional. Equally problematic, it could lead officers to conduct stops and pat-downs that are ineffectual—stops and pat-downs that fail to address crime and that diminish MPD's legitimacy due to their intrusiveness. ***Based on the stop data MPD has produced so far, this is a real concern.*** Of the searches of persons arising from reported stops in the 17-month-plus period between July 22, 2019 and December 31, 2020, nearly half (8,499 of 18,020 total, or 47%) were justified as protective pat-downs, but only a very small percentage turned up a gun (6.2%) or a weapon of any kind (8.2%).

8. **Recommendation:** The Council should modify Section 110 of Act 23-336 ("Limitations on Consent Searches") by prohibiting all consent searches—warrantless searches permitted based solely on the consent of the individual whose person or property is searched—and, in criminal cases, should require the exclusion of any evidence obtained from a consent search.

## Discussion

Police officers ask for consent to search because when they obtain consent, it is the quickest and easiest way to search a person or property suspected of possessing or containing evidence of a crime. Officers do not need a warrant, nor do they need probable cause to arrest, reasonable suspicion of possession of a dangerous weapon, or any other legal justification for a warrantless search. Among many variants, consent searches include the practice among some MPD officers of telling individuals to lift their shirts and show their waistbands.

Where consent is given voluntarily and not coerced, consent searches are constitutional. The problem is that when consent is given, it is hardly ever truly voluntary. As both social scientists and courts have recognized, individuals

give their consent because, when confronted with police authority, they feel like they have no choice and want to appear compliant.<sup>418</sup> The Council itself recognized this reality in Subtitle F of Act 23-336, which requires officers to provide Miranda-style warnings and obtain consent without threats or promises. Research shows, however, that such warnings are ineffective at reducing the coercion inherent in an officer's request for consent, especially when the subject is a youth or has intellectual or behavioral health disabilities.<sup>419</sup>

Making matters worse, consent searches are not serving their intended purpose of solving crime, particularly violent crime. MPD has only recently begun to make data available on the scope and efficacy of its consent searches during stops. The data show that, between July 22, 2019 and December 31, 2020, MPD officers conducted 4,427 consent searches of persons. Only 2.3% resulted in the seizure of a gun and only 9.5% resulted in the seizure of any evidence of a crime. And those figures assume that officers reported *all* of their consent searches of individuals (including, e.g., all the times they asked someone on the street to lift their shirt and show their waistband), which is doubtful.

MPD officers are also conducting a disproportionate number of consent searches of Black people. From July 22, 2019 through December 31, 2020, 92% (4,779 out of 5,188) of all consent searches were of Black people. These figures confirm the concerns expressed by the District's Office of Police Complaints in 2017: "This disproportionate use of consent searches causes concern for the Police Complaints Board that the practice is undermining community trust in the police, especially in areas with substantial minority populations."<sup>420</sup>

In recognition of the problems with consent searches, certain jurisdictions have limited them. The New Jersey Supreme Court has interpreted the New Jersey constitution to prohibit consent searches of vehicles during traffic stops unless the officer has reasonable suspicion that an occupant is involved in criminal activity beyond the traffic violation.<sup>421</sup> A number of police departments, including Newark, New Orleans, Cleveland, Baltimore, and Ferguson (Missouri), require prior supervisory approval, reasonable articulable suspicion that the subject is involved in criminal activity, and/or pre-search warnings notifying the subject of their right to decline. As mentioned above, certain prosecutor's offices now refuse to prosecute cases based on contraband seized in consent searches during traffic stops.

The District of Columbia should join this emerging trend and go a step further. There is no justifiable reason to permit a practice that is not only inherently coercive and intrusive, but also ineffectual and prone to extreme racially disparate effects. By enacting legislation to prohibit consent searches altogether, the Council will properly require officers who wish to conduct searches to properly focus on *safety*, rather than on targeting individuals who are likely to consent.

**9. Recommendation: The Council should codify MPD policy restricting strip, squat, and body cavity searches and, in criminal cases, should require exclusion of any evidence obtained in violation of these restrictions.**

**9 (a) Recommendation:** Consistent with existing MPD General Order 502.01, the Council should prohibit searches of undergarments and private body parts in public places.

**9 (b) Recommendation:** Consistent with existing MPD General Order 502.01, the Council should require that any body cavity search be conducted (1) by a physician at the nearest hospital in a private and secure location; and (2) only upon a watch commander's determination of probable cause that the arrestee is concealing evidence of crime in a body cavity.

## Discussion

MPD General Order 502.01 strictly limits strip searches, squat searches, and body cavity searches. None of these searches may be conducted in the field. Strip searches may only be “conducted in a private and secure area where the prisoner removes or arranges his/her clothing to allow a visual inspection of the genitals, buttocks, anus, breasts and undergarments.” Squat searches may only be “conducted in a private and secure area where the prisoner crouches or squats with undergarments and other clothing removed, exposing the genital and anal area.” Both strip searches and squat searches require the prior approval of the watch commander at the holding facility where the arrestee is being detained.

MPD policy restricts body cavity searches even more: it altogether prohibits officers from conducting them. They may only be conducted by a physician in a secure and private area at the nearest hospital, after the holding facility watch commander agrees that there is probable cause that the arrestee has weapons, contraband, or evidence concealed in a body cavity.

Despite these appropriate restrictions, there is evidence that MPD officers violate them. In the past several years, individuals have lodged several lawsuits alleging that MPD officers conducted sexually invasive searches of their genital areas on the street or in a home during the execution of a search warrant.<sup>422</sup> The District has settled two of those cases; the other two remain pending. Most troublingly, in an administrative disciplinary proceeding against one of the sued officers—who was terminated for a *different* invasive field search performed half an hour after the search that was the subject of the lawsuit—a sergeant testified in the officer’s defense that the tactic was common practice. He asserted that he advised all of his officers—in violation of policy—“Don’t be afraid to go up in the crotch.”<sup>423</sup>

Given the specter of routine violations of MPD’s restrictions on invasive, humiliating searches, the Council should formally codify MPD policies on strip, squat, and body cavity searches; and in criminal cases, to give teeth to this law, the Council should require the exclusion of any evidence obtained in violation of these policies.

**10. Recommendation: MPD should modify the way it collects, reports, and publishes data on stops. These modifications are necessary to fully achieve the transparency and accountability objectives of the NEAR Act; to ensure that MPD officers receive the instruction they need to conduct stops lawfully and document them properly; and to facilitate rigorous, evidence-based assessments of MPD’s claim that its current approach to gun violence is justified despite the attendant intrusions on freedom and racial disparities.**

**10 (a) Recommendation:** MPD should disaggregate data on pedestrian stops from traffic stops (as well as from bicycle and harbor stops). Relevant data on each type of stop should be recorded, made available, and analyzed and reported separately, as well as in the aggregate.

**10 (b) Recommendation:** MPD should require officers to record their assignment at the time of a stop (e.g., Patrol District, Crime Suppression Team, NSID-Narcotics Enforcement, NSID-Gun Recovery Unit).

**10 (c) Recommendation:** MPD should stop requiring officers to ask the gender, race, and ethnicity of the individuals they stop.

**10 (d) Recommendation:** MPD should modify the electronic report form that officers complete for stops (see appendix to General Order 304.10) to generate clear reporting, produce maximally meaningful data, and prompt officer adherence to law and policy. See “Discussion” below for details.

**10 (e) Recommendation:** To fully achieve the transparency and accountability objectives of the NEAR Act, MPD should publish its raw stop data twice annually on specified dates. MPD should make the raw data available through an application programming interface so that organizations and community members can readily organize the data through custom dashboards and interfaces and perform their own analyses.

## Discussion

The NEAR Act, which the Council passed in 2016, requires MPD to provide transparency and ensure accountability for its stop practices through the collection and publication of data on all stops. The NEAR Act adopts a core recommendation of the President’s Task Force on 21st Century Policing: “To embrace a culture of transparency, law enforcement agencies should ... regularly post on the department’s website information about stops, summonses, arrests, reported crime, and other law enforcement data aggregated by demographics.”<sup>424</sup>

Several years after the passage of the NEAR Act, following litigation compelling MPD’s compliance, MPD upgraded its record management system to facilitate electronic field-based reporting of stop data, amended its policy on stops (General Order 304.10) to provide officers guidance on how to complete the new electronic report forms, and began collecting data. The first data collection period ran from July 31, 2019 through December 31, 2019—a short five months. MPD produced its first stop data report, which covered that period, in March 2020. MPD waited almost a full year to publish its second set of data. On February 22, 2021, as this report was being drafted, MPD posted to its website data on stops made between January 1 and June 30, 2020. Eleven days later, on March 5, 2021, MPD posted data on stops made between July 1 and December 31, 2020.

These first three stop data sets reveal several flaws in MPD’s stop data collection system. These flaws undermine the NEAR Act’s transparency and accountability objectives. The recommendations here are designed to cure these flaws.

*Disaggregate traffic and pedestrian stops.* MPD’s current stop data collection system unhelpfully and confusingly distinguishes between “ticket stops” and “non-ticket stops,” rather than more conventionally—and more usefully—distinguishing pedestrian stops from traffic stops. Pedestrian stops and traffic stops are different. They are usually made for different reasons and are often justified under different legal standards. A pedestrian stop is typically made based on “reasonable articulable suspicion” that a crime has been or is being committed; it is often based in part on information other than an officer’s personal observation. A traffic stop, by contrast, is generally based on probable cause that a motorist has committed a traffic violation and almost always based on an officer’s observation. Pedestrian and traffic stops also have been susceptible to different types of abuses: unwarranted pedestrian stops made under indiscriminate “stop and frisk” regimes in minority neighborhoods (in New York City, for instance), as opposed to pretextual traffic stops, made not to foster traffic safety but as a pretext to investigate non-traffic offenses. For these reasons, it is important to collect and separately analyze data on pedestrian and traffic stops. Without disaggregating the data, it is impossible to identify whether, for instance, pedestrian stop practices, as distinguished from traffic stop practices, are effective at getting guns off the street and addressing violent or otherwise serious crime.

To facilitate separate analyses of the efficacy and legitimacy of pedestrian and traffic stop practices, MPD should abandon the confusing ticket/non-ticket stop distinction and instead require officers to explicitly identify whether a stop is a pedestrian stop or a traffic stop (or a far less common bicycle or harbor stop). MPD's record management system should then permit disaggregation of the data. Additionally, MPD should analyze and report on the disaggregated data in its Stops Data reports (e.g., the percentages of pedestrian and traffic stops leading to citation or arrest, broken down by race and district; the percentages of pedestrian and traffic stops leading to the seizure of evidence of a crime broken down by race, district, and type of contraband) and should make the disaggregated raw data available to the public.

*Require officers to identify their unit.* MPD's current stop data collection system does not require officers to identify their assigned unit at the time they make a stop. To ensure adequate officer supervision and fuller transparency of MPD stop practices, it is vital for MPD to maintain stop data and identify stop trends by each MPD unit. If a particular unit is making an uncommonly large or disproportionate number of stops—particularly if those stops are for low-level offenses or are infrequently producing evidence of criminal activity—the unit commander should take corrective action, including counseling unit personnel and requiring remedial training. MPD cannot assess the efficacy of a unit's performance or identify the need for corrective action for a unit without maintaining unit-level data on stops. Nor can the public identify, with empirical evidence, which units are generally engaging in effective, properly restrained stop practices and which units might not be.

*Stop requiring officers to ask for individuals' race and ethnicity.* MPD policy presently requires officers to ask the race and ethnicity of the individuals they stop. General Order 304.10 specifically states: “*For the purposes of documenting stopped individuals' gender, race, ethnicity, and date of birth, members shall conduct a direct inquiry by stating, 'Per the NEAR Act, as passed by the Council of the District of Columbia, we are required to ask for your gender, race, ethnicity, and date of birth.' Members shall record the demographic information as reported by the stopped individual.*” Getting officers to record stop data is hard enough. Requiring them to ask plainly awkward questions about a subject's gender, race, and ethnicity provides an additional disincentive, and makes the encounter even more uncomfortable for the subject. Equally if not more important, the key factor in assessing whether a stop, pat-down, or search is impermissibly based on race or ethnicity is *not* the subject's actual race and ethnicity, but rather the officer's *perception* of the subject's race and ethnicity. The existing directive undermines the very purpose of recording the data.

*Require officers to properly record the information source and factual justifications for stops.* Despite its appropriate objective of prompting officers to identify the facts that lead to and justify their stops, the REASONS field on the existing stop data report form conflates two conceptually distinct types of facts that lead to a stop: the source of the information justifying a stop on one hand, and the factual reasons for the stop on the other. To eliminate the confusion, the report form should include two fields that capture the general categories of facts that lead to stops: (1) INFORMATION SOURCE, to include “officer's own observation,” “BOLO/lookout,” “call for service,” “witness/informant,” “officer's prior knowledge,” allowing multiple options to be selected; and (2) FACTUAL JUSTIFICATION, to include “observed a weapon,” “observed a moving violation,” “response to a crash,” “individual's actions,” “individual's characteristics,” and “warrant/court order,” allowing multiple options to be selected.

Vitaly, MPD should continue to include a text box in the REASONS field so that the full, narrative justification for the stop is included in every report. The text box remains essential because, without a narrative that fully explains the facts justifying a stop, police supervisors, courts, prosecutors, defense counsel, and community members will not have the information needed to determine the legality and legitimacy of the stop.

Note that the existing report form contains two fields for REASONS for stops—one for ticket stops and one for non-ticket stops. Because the first recommendation above is to disaggregate traffic, pedestrian, bicycle, and harbor stops, there is no need to have these two separate fields for REASONS for stops.

*Eliminate “probable cause” as a type of search of PERSONS.* MPD’s existing stop data report form for pre-arrest searches of PERSONS identifies “**probable cause**” as a TYPE of search (along with consent, protective pat-down, and warrant). ***This is extremely problematic.*** There is no such thing as a lawful, pre-arrest “probable cause” search of a person during a stop or otherwise. The reporting option for a pre-arrest probable cause search of a person thus tacitly encourages officers to make pre-arrest searches of individuals that are both unconstitutional and unauthorized by the pertinent MPD policy, General Order 304.10, which correctly explains when pre-arrest searches of persons (as well as vehicles) are permitted.

***This is not merely a theoretical concern.*** MPD’s stop data for July 22, 2019 through December 31, 2020 indicates that officers checked the “probable cause” option for 28.7% (5,177 of 18,020) pre-arrest searches of PERSONS arising from stops.

Also note that MPD’s March 2020 stop data report (there is no full-year report yet for the 2020 data) makes the following misleading statement of law, which both reflects the problem with the “probable cause” option for pre-arrest searches of persons and contradicts the accurate statements of law in GO 304.10: “To conduct a probable cause search of a person”—again, the law provides for no such thing—“a police officer must have probable cause to believe that the person has contraband or physical evidence of a crime on his or her person.” The report form should eliminate “probable cause” as a justification for a search of a PERSON.

*Modify the “probable cause” option for types of pre-arrest searches of PROPERTY.* MPD’s current stop data report form also permits officers to identify “probable cause” as the justification for searches of PROPERTY. Under both the Fourth Amendment and General Order 304.10, however, pre-arrest “probable cause” searches of property are limited to searches of *vehicles*. They do not include searches of other types of property. The Constitution and General Order 304.10 also permit “protective vehicle searches,” which are not probable cause searches but, because they are authorized, should also be specified in the report form. Instead of identifying “probable cause” as a justification for a search of PROPERTY, the report form should identify two different justifications: “probable cause-vehicle” and “protective vehicle search.”

*Require officers to properly record the information source and factual justifications for pre-arrest pat-downs and searches.* MPD’s current stop data report form field for REASONS for pre-arrest searches of both PERSONS and PROPERTY conflates reasons that are conceptually distinct. It mixes legal justifications (consent, warrant, exigent circumstances) with factual justifications (characteristics of an armed individual, individual’s actions, individual’s characteristics, nature of alleged crime), along with sources of information (law enforcement source, witness/informant, prior knowledge). Some of the listed reasons are vague. The legal justifications should be eliminated altogether because they duplicate the options in the TYPE field. Further, creating two separate fields for INFORMATION SOURCE and FACTUAL JUSTIFICATION will properly capture the distinctions between the two types of information. As explained in our recommendation to retain a text box to document the reasons for a stop, a text box remains essential to document the reasons for a pat-down or search because police supervisors, prosecutors, defense counsel, courts, and the public must be able to discern whether the pat-down or search was legally justified.

*If an arrest is made during a stop, require officers to record whether they conducted a search incident to arrest, and, if so, any evidence of a crime that the officer recovered.* MPD's stop data report form does not include options for searches conducted incident to an arrest. For a stop that leads to an arrest, a search may be lawfully conducted following the arrest even though it would not be legally authorized pre-arrest in connection with the stop itself (where searches are limited to consent searches, protective pat-downs, search warrants, and probable cause and protective searches of vehicles). Evidence of criminal activity is often recovered during such post-arrest searches. Gathering data on post-arrest searches that begin as stops would not only be useful for identifying trends and facilitating supervision, but also because it would implicitly reinforce for officers that while they may conduct a search incident to a lawful arrest, they are only permitted to conduct searches during stops in limited circumstances (consent, protective pat-down, search warrant), and never based simply on probable cause to believe the stopped individual is in possession of contraband.

*Require officers to report the latitude and longitude of the stop.* It is important to know not only the district in which a stop is made, but the precise location within the district, too, as supervisors and community members alike should know whether stops are concentrated in some areas and not in others.

There is a final, serious problem in addition to the above-identified flaws in MPD's stops reporting mechanism: MPD continues to be delinquent in publishing and reporting its stop data. Although MPD has been under NEAR Act requirements since 2016, it only began collecting and publishing NEAR Act data after it was sued to require collection and publication. Since then, it published NEAR Act data in March 2020 covering a short, five-month period, and then waited nearly a full year to publish data again.

To make clear just how important collection, publication, and reporting of stop data is to MPD's legitimacy, the Council should amend the NEAR Act to require MPD to publish NEAR Act data on a *regular, timely, biannual schedule*. In the interests of transparency and accountability, the raw data should be made available to the public in a readily usable format so that community members can perform their own analyses.

- 11. Recommendation: The Council should impose a moratorium on MPD's use of canines for purposes other than explosive ordnance detection until MPD publishes comprehensive data regarding its use of canines, including, among other things, (a) the number and effectiveness of canine searches, showing no hit and false hit rates and broken down by suspect race and ethnicity and type of contraband found (if any); and (b) all canine uses of force broken down by suspect race and ethnicity.**

## Discussion

Substantial research shows that the use of dogs in police work can be problematic. In sum, police dogs raise two concerns. First, in many police departments, dogs are used as weapons to bite people, and the injuries they inflict can be serious; yet the victims are often suspected of only minor crimes and in some places are disproportionately Black, and there is often little accountability when canine unit officers overreach.<sup>425</sup> Second, when police dogs are used to sniff for drugs—a common tactic in pretextual traffic stops as discussed above—they often get it wrong, either failing to alert or falsely alerting to the presence of drugs. The reasons for their unreliability include inadequate training, improper certification methods, and an instinct to respond to handler cues rather than to what they smell.<sup>426</sup>

The Commission has not concluded one way or the other whether MPD's Canine Unit improperly uses dogs as weapons or whether MPD's dogs have a poor record of accurately alerting to drugs or guns. That is because MPD has not made publicly available the data needed to draw any conclusions about the use or effectiveness of its dogs.

Three weeks before this report was scheduled to be published—more than three months following its request—the Commission did receive data showing that, from 2018-20, apprehension dogs bit five people, all Black; and that from 2014-17, apprehension dogs bit another 15 people (race unidentified), for an average of over two bites per 1,000 deployments during the seven-year period. Without more information and transparency, the Commission cannot gauge whether the dogs are being used properly for apprehension purposes.

The Commission has not seen any data on canine effectiveness with drug and gun sniffs. MPD also has not published any of the data needed to determine whether MPD officers are prolonging traffic stops to await the arrival of dogs in violation of the Supreme Court's 2015 decision in *United States v. Rodriguez*. However, the Commission has heard anecdotal evidence about MPD officers inappropriately extending traffic stops to allow for dog sniffs. And the research about the unreliability of dog sniffs is troubling. Forcing a person to wait outside their car, in full public view, for a dog to come and sniff around is a degrading, humiliating intrusion on their freedom. If MPD dogs are frequently getting it wrong, or if all they are finding are inconsequential quantities of drugs, the palpable harm these experiences cause is not worth it.

Because of the potential for misuse of canines, MPD must begin collecting and publishing data on the work of its Canine Unit. The data should include the following:

- ☒ The number of canines trained for each type of use (drug detection; firearms detection; explosives detection; search and rescue; “apprehension”), as well as the number that are cross-trained for different uses; and for dogs trained to detect drugs, the types of drugs each is trained to detect.
- ☒ The vendor for each dog.
- ☒ All training records for each dog, including records of training prior to coming to MPD, including but not limited to records showing whether the dog is double-blind certified.
- ☒ Language MPD uses to train and communicate with each dog.
- ☒ All policies related to canine use, including but not limited to: deployment criteria, both on and off leash; when they can bite; when a drug dog alert will lead to a search; what constitutes an “alert” and whether MPD can replicate/be transparent or whether alerts are “only known to handler.”
- ☒ Complete data on field activity for each dog, including:
  - Number of uses
  - Types of uses
  - Number and rate of apprehensions, as well as method for calculating apprehension rate
  - Number and rate of bites during apprehension attempts, as well as method for calculating bite rate
  - Number and rate of hits for drug and gun dogs, as well as method for calculating hit rates
  - Type of contraband recovered for each successful hit
  - Number and rate of false hits for drug and gun dogs, as well as method for calculating false hit rates
- ☒ Alleged offense associated with each use of apprehension dog.
- ☒ Demographic information for each individual subject to apprehension dog deployment.
- ☒ Demographic information for each person cited or arrested based in whole or in part on information obtained by drug dog.

Until MPD publishes such data, the Council should impose a moratorium on the use of canines for both apprehension and drug- and gun-detection purposes. During the moratorium, canine use should be limited to search-and-rescue and explosive ordnance detection.

## II. EXECUTING SEARCH WARRANTS JUSTLY AND SAFELY

12. **Recommendation:** The Council should amend the DC Code, and MPD should modify its policies, to ensure that MPD officers execute search warrants lawfully, safely, and in a manner that minimizes harm to people and property. Specifically:

12 (a) **Recommendation:** The Council should enact legislation, similar to the Search Warrant Execution Accountability Act of 2016, that would:

- A. Require officers to establish by a preponderance of the evidence, and demonstrate that they made all reasonable efforts to verify, that the suspect whose property is the subject of a warrant application either owns the residence or lives there.
- B. Require both MPD and the Deputy Auditor for Public Safety (see Section VIII) to conduct a full investigation of any search conducted at the wrong premises (either a wrong address or an address where the suspect does not actually live) and publish a report of its findings regarding the causes of the error.

12 (b) **Recommendation:** The Council should ban no-knock warrants. Additionally, the Council should limit quick-knock raids, in which officers enter a home with a warrant immediately after knocking and announcing their presence, by: (1) requiring approval from the pertinent commander; and (2) (a) requiring at least 30 seconds to elapse with no response or a refusal to permit entry after officers knock-and-announce at least three times; or (b) requiring the warrant to authorize entry within 30 seconds after officers knock-and-announce based on a judicial finding that waiting 30 seconds would jeopardize officer, occupant, or bystander safety or compromise evidence; or (c) allowing immediate entry after officers knock-and-announce, based on exigent circumstances that arise after issuance of the warrant.

12 (c) **Recommendation:** The Council should repeal DC Code 23-524(g), and MPD should correspondingly amend General Order 702.03, specifically Section VII.F.8.b., e., f. & g., to make clear that it is not automatically lawful to pat down or search everyone at a location subject to a search warrant: officers still need reasonable suspicion that a person is armed and dangerous before patting down that person for weapons, and any full search of a person still must be justified either by the warrant itself or by a recognized exception to the warrant requirement (“probable cause” is not an exception).

MPD should provide all officers and recruits immediate training on this subject and should discipline officers for conducting unlawful pat-downs and searches during search warrant executions.

12 (d) **Recommendation:** The Council should amend DC law and MPD should amend General Order 702.03 to (1) prohibit gun-pointing and handcuffing during the execution of search warrants, unless there is an articulable immediate threat to the safety of officers or others; and (2) include special precautions to be taken during the execution of search warrants when older adults or children are present.

**12 (e) Recommendation:** MPD should amend General Order 702.03 to expressly (1) direct officers to minimize disruption and damage to property during the execution of a search warrant; and (2) prescribe discipline for officers who unnecessarily or unjustifiably damage property.

**12 (f) Recommendation:** The Council should authorize immediate compensation for property destroyed or damaged, or pets harmed or killed (unless harmed or killed in response to the pet attacking an officer), during the execution of a search warrant, regardless of whether contraband is found or an arrest is made during the search.

## Discussion

Searching one's home is among the most intrusive and terrifying of all law enforcement actions. When police obtain a warrant to search a home, they must ensure that they are searching the right place, and they must execute the warrant with restraint. The law demands it. Police legitimacy depends on it.

In 2016, *The Washington Post* published a feature length article detailing an exhaustive investigation of 2,000 search warrants executed by MPD between 2013 and 2015. The *Post* found that in 284 searches, or 14%, officers had obtained a warrant for a residence without observing criminal activity there. The homes were almost exclusively in Black neighborhoods. MPD officers simply arrested an individual on the street for drugs and guns, sought an address for the person, and then justified a search warrant for that address based on their "training and experience." According to the *Post*, "[t]he language of the warrants gave officers broad leeway to search for drugs and guns in areas saturated by them and to seize phones, computers and personal records." The *Post* found that, in a dozen of these cases, MPD searched the wrong residence. It also found that officers frequently engaged in aggressive tactics—breaking down doors, pointing guns, handcuffing innocent occupants, knocking over furniture, destroying personal belongings, and more.<sup>427</sup>

The suite of recommendations here seeks to ensure that, to the greatest extent possible, MPD diminishes the harms that can result from the execution of search warrants.

*Avoiding mistaken searches.* In 2016, in response to the *Post* investigation, former Councilmember David Grosso introduced legislation to prevent officers from seeking and executing search warrants at the wrong residence. The legislation would have required officers to exercise due diligence to ensure that they were requesting a warrant for the correct residence, and would have provided compensation for individuals victimized by warrants executed at the wrong residence.<sup>428</sup> To ensure that officers get it right when they seek search warrants, and to curb the dubious practice of obtaining warrants based on nothing more than a street arrest and an address matching the arrestee's, the Council should revive and enact former Councilmember Grosso's proposed legislation. Additionally, it should fortify the legislation by requiring MPD and the deputy auditor for public safety (a position recommended in Section VIII), to investigate and publish independent reports on all cases in which officers seek and execute a warrant at the wrong address. With such investigations, MPD can engage in the self-examination necessary to correct its errors and prevent them from recurring.

*Eliminating no-knock warrants and limiting quick-knock raids.* The tragic killing of Breonna Taylor in Louisville last year highlighted the dangerous potential for unnecessary violence associated with no-knock warrants and quick-knock raids. No-knock warrants permit officers to enter a home without first knocking and announcing their presence. In quick-knock raids, officers enter the home either as, or immediately after, they knock and announce.

Nationwide, between 2010 and 2016, at least 94 people died during no-knock raids, including 13 law enforcement officers.<sup>429</sup> Whatever the perceived tactical advantages of raiding a home using the element of surprise, they are far outweighed by the risk of potentially fatal harm to occupants and officers alike.<sup>430</sup> Moreover, no-knock and quick-knock raids effectively eliminate the presumption of innocence—they are based on probable cause, a low bar—and are carried out disproportionately against Black people.<sup>431</sup>

In the wake of Breonna Taylor’s death, the city of Louisville passed an ordinance banning no-knock warrants and strictly limiting quick-knock raids.<sup>432</sup> Other jurisdictions, including Oregon and Virginia, have similarly banned no-knock warrants.<sup>433</sup>

MPD maintains that it does not seek no-knock warrants, but its policies do not prohibit them. It is unclear whether MPD officers conduct quick-knock raids. To eliminate these dangerous tactics and leave no doubt about their impropriety, the Council should ban no-knock warrants and strictly limit quick-knock raids.

*Ensuring lawful pat-downs and searches.* The ordinary constitutional rules for protective pat-downs and warrantless searches of individuals are not relaxed during the execution of a search warrant—they apply with equal force. A protective pat-down during the execution of a search warrant for a particular location is lawful only if an officer has individualized reasonable articulable suspicion that the person to be patted down at the location has committed a crime and is armed and dangerous. A full search of an individual performed during the execution of a search warrant for a particular location is lawful only if the search warrant authorizes a search of the individual or under one of the established exceptions to the warrant requirement—e.g., incident to a lawful arrest or with voluntary consent. A search based solely on probable cause to believe a person at the location possesses evidence of a crime is **not** lawful; there is no such thing as a warrantless “probable cause search,” including at a location subject to a search warrant.

DC Code 23-524(g) and MPD General Order 702.03 contain language that does not match constitutional requirements, as they provide officers executing search warrants with more authority than the Fourth Amendment allows to pat down and search individuals present at the location being searched. In particular, DC Code 23-524(g) unconstitutionally: (1) authorizes officers to conduct a full pre-arrest search of a person—not just a protective pat-down—“to the extent reasonably necessary to protect [themselves] or others from the use of any weapon which may be concealed upon the person;” and (2) authorizes officers to conduct a full pre-arrest search of a person “to the extent reasonably necessary to find property enumerated in the warrant which may be concealed upon the person.” In *Ybarra v. Illinois* (1979), the Supreme Court invalidated application of a very similar law. Consistent with the DC statute, MPD General Order 702.03 improperly: (1) mandates protective pat-downs of all non-arrested occupants “when necessary” during warrant execution (VII.F.8.b.); (2) authorizes full pre-arrest searches of occupants upon articulation of probable cause based on, e.g., “gestures or conduct indicative of criminal conduct” or “information that [the occupant] is involved in the criminal activity on which the search warrant is based”(VII.F.8.e.); (3) authorizes full pre-arrest searches of occupants when “reasonably necessary to ensure safety and/or find contraband or property enumerated in the search warrant” (VII.F.8.f.); and (d) mandates full pre-arrest searches when an officer “can articulate a reasonable belief that the occupants were involved in the illegal activity on which the warrant was based” (VII.F.8.g.). Like the DC statute, none of these policy provisions are constitutional.

To comply with constitutional standards, the Council should repeal DC Code 23-524(g); MPD should amend General Order 702.03; and MPD should train its officers to comply with the revised policies.

*Prohibiting unnecessary intimidation and degradation.* Aggressive tactics are common in the execution of search warrants in the District. As the *Post* investigation found, officers often barge into homes with guns pointed at people's faces and then handcuff them while conducting the search. Similar tactics are used elsewhere. For instance, in mistakenly raiding one home last year, Chicago Police handcuffed a naked woman as she got out of the shower, and in mistakenly raiding another home three times, they broke down the door with a battering ram and trained guns on young children.<sup>434</sup>

Routinely using terrifying, humiliating tactics is both unnecessary and counterproductive. Unless an occupant of the targeted residence poses an immediate threat of harm, such tactics should not be used. In particular, unless the actions of an occupant cause officers to reasonably fear for their safety or the safety of others, officers should not point their guns at the occupant or restrain the occupant in handcuffs. Such needlessly menacing tactics induce trauma and undermine community trust. This is particularly true when the occupant is a senior, who might be physically less capable of withstanding the stress, or a youth, who is even more likely to be traumatized.

*Limiting damage to property.* In recognition of the needless property damage sometimes wrought by the execution of search warrants, certain police departments have adopted policies that require officers to execute search warrants in a manner that minimizes damage and disruption. Baltimore Police Department, for example, mandates that “[a]ll searches shall be conducted in a thorough and professional manner with minimal damage or disruption to the location searched. To minimize property damage and the need for forcible entry, and where doing so would not place BPD members at heightened risk, members shall attempt to lawfully obtain keys, combinations, or access codes when a search of locked property is anticipated.”<sup>435</sup> Similarly, the San Marcos, Texas Police Department requires officers to exercise “reasonable care...to minimize damage to property” when executing warrants.<sup>436</sup>

These policies not only preserve property, they also prevent the erosion of community trust in policing. As one researcher noted, “the potential for negative interactions is likely heightened during more intrusive police interactions, and negative experiences have a greater influence on legitimacy views than positive ones.”<sup>437</sup>

MPD General Order 309.03 (Forcible Entries/Property Damage Caused by MPD Police Action) states that “the policy of [MPD] is to minimize damage to the property of citizens when making forcible entries.” There is, however, no general policy requiring officers to minimize damage to property inside a residence during the execution of search warrants, whether accomplished by forcible entry or consent. MPD should adopt one.

In addition, the Council should fully and promptly enact a law to compensate District residents whose property is damaged or destroyed during searches. General Order 309.03 provides that MPD will compensate residents for property damage caused by erroneous forcible entries (i.e., damage to an entryway during the search of the wrong address) and will also advise residents on how to file a claim for property damage resulting from actions other than a forcible entry. However, as the *Post* reported, MPD and the District do not readily honor this policy. Residents often have to fight for reimbursement and, even when successful, receive less than what they claim to be owed, long after the damage occurs.

Former Councilmember Grosso proposed a law that would have required reimbursement for individuals whose property is damaged during searches at the wrong address. Minnesota has passed a similar law, which requires “just compensation” for innocent people whose property is damaged during searches.<sup>438</sup> Former Councilmember Grosso’s bill and laws like Minnesota’s are a good start. But the District should go further. Even when a search warrant is executed at the *correct* address, and even when contraband is found, the home’s residents do not forfeit their property rights. They deserve to be compensated for property that is damaged or destroyed during any search, as

General Order 309.03 itself implies. Furnishing them the right to compensation should serve to incentivize officers to execute search warrants with the appropriate restraint.

13. **Recommendation:** For occupied residences and businesses, the Council should prohibit search warrants that are either solely for drugs or based solely on allegations of drug activity.

### Discussion

The *Post*'s findings are and continue to be consistent with the experience of both District residents and criminal defense lawyers: MPD officers frequently justify a search warrant for a home not based on observations or reports of criminal activity in the home or on any other investigation, but instead based on nothing more than a street arrest for drugs, an address lookup for the arrestee, and the officers' asserted "training and experience" that more drugs will be found at the address. As the *Post* found, search warrants issued on this basis often turn up no evidence, and even when evidence is found, it is often just a meager amount of drugs.

The War on Drugs has been ineffectual. But as Michelle Alexander explains in *The New Jim Crow*, and numerous others have recounted, it has also been harmful, particularly to Black communities, spawning three decades of mass incarceration that state and federal lawmakers have begun to rethink and roll back. Given the combination of the intrusiveness of police searches of people's homes and the ineffectiveness and harmfulness of drug enforcement policies, the Council should restrict MPD's authority to obtain search warrants solely for drugs or based solely on evidence of a drug crime.

Importantly, this restriction would not prohibit MPD from seeking warrants for drugs in combination with other contraband, particularly firearms, nor would it prohibit MPD from seeking warrants based on evidence of drug crime in combination with other crimes. MPD would and should remain empowered to obtain warrants for guns, evidence of violent crime, and evidence of other serious crimes. This recommendation would simply bar MPD from doing what the *Post* reported—it would prohibit MPD from transforming simple street arrests for drug crime into invasive and sometimes dangerous searches of homes.

14. **Recommendation:** The Council should require MPD to collect, report, and publish quarterly the following data on each search warrant application in aggregable format in a relational database:
  - A. Race/ethnicity/gender identity of suspect.
  - B. Assignment of requesting officer (e.g., Patrol, CST, GRU).
  - C. Type of property requested to be searched (premises, vehicle, mobile or electronic device).
  - D. Person to be searched, if any.
  - E. Type of evidence sought (e.g., firearms, electronic files).
  - F. District in which property to be searched is located.
  - G. Offenses alleged in warrant application.
  - H. Approval, rejection, or modification by USAO.
  - I. Approval, rejection, or modification by the court.
  - J. Whether approved application was executed.
  - K. Whether contraband was seized and, if so, what type.
  - L. Whether arrest resulted and, if so, offenses charged and whether individual(s) arrested were the target of the investigation.

- M. Whether force was used and, if so, what type.
- N. Whether convictions resulted and, if so, offenses of conviction.
- O. Whether a claim of property loss was made.
- P. Whether correct address/vehicle/device/person was searched.

### Discussion

As discussed above, police searches of individuals' homes, vehicles, electronic devices, and persons are invasions of privacy that can inflict psychological harm and damage to property and erode police legitimacy. Therefore, police searches must not only be constitutional under the Fourth Amendment. They also must verifiably achieve their intended purpose of solving crime and preserving public safety, and they must be executed properly and with restraint. MPD, however, does not collect data on its search warrant practices. Nor does the U.S. Attorney's Office. And the data collected by the Superior Court is far too limited to be useful.

The absence of data on MPD's search warrant practices means MPD provides no transparency around, and has no accountability for, the use of a law enforcement tool that is inherently inimical to liberty. This raises many serious questions: Are MPD officers seeking warrants with adequate legal justification? Are they seeking warrants, and thus seeking to use finite public resources, to solve the violent crimes that plague the District, rather than low-level offenses? Are warrants leading to the recovery of evidence? Are warrants leading to criminal charges and ultimately convictions and, if so, for serious crimes or low-level offenses? Are warrants being sought in a racially disparate manner? How often are warrants being executed in an abusive way that leads to property damage? How often are warrants being executed at the wrong location or on the wrong person?

Because of the complete absence of data, none of these vital questions about the legitimacy of MPD's search warrant practices can be answered. Implementation of the Commission's recommendation is needed to produce answers.

### III. MAKING ARRESTS ONLY WHEN NECESSARY

15. **Recommendation:** The Council should replace the District's presumption-of-arrest standard with a presumption-of-citation standard by amending DC Code 16-1031, 23-581 and 23-584 to require either verbal warnings or citations in lieu of arrest ("field arrests" in the DC Code) in all circumstances enumerated in MPD's Executive Order 20-011, which addresses changes in MPD's citation release order due to the COVID-19 pandemic.

Correspondingly, MPD should: (1) establish and enforce a "most effective, least intrusive response" policy that mandates compliance with the new law, defines and requires a problem-solving approach to criminal activity, and affirmatively promotes alternatives to arrest; and (2) fulfill its obligations under DC Code 5-107.02(b)(1), which requires training on "community policing," by providing at least eight hours of Academy training to recruits, and at least four hours of annual refresher in-service training to officers on the new law, alternatives to arrest, and "most effective, least intrusive response" principles.

### Discussion

Arrests have a serious impact on both the individuals who are arrested and their families. That is especially true when arrests lead to detention in a jail or holding facility. Arrests result in a loss of liberty, induce stress, and can

have adverse consequences on family responsibilities, employment, and income. Arrests also have a serious impact on public resources. They consume officer and court time and fill up detention facilities. And arrests for low-level offenses harm police-community relations. Community members question the fairness and wisdom of locking people up for minor infractions.

Equally important, arrests for low-level offenses are an ineffectual way to reduce serious crime. There is a raft of research on the ineffectiveness of “zero-tolerance” policing—policing that hinges on widespread, aggressive use of stops, searches, and arrests, usually for minor offenses, as a crime-fighting strategy. That research shows that zero-tolerance policing poisons police-community relations and fails to drive down the rate of serious crime.<sup>439</sup> Arresting people for low-level offenses is not “smart” law enforcement.

To prevent familial and community dislocation, conserve finite public resources, and foster police legitimacy, the Council and MPD must rethink local arrest practices. Where effective in addressing criminal activity, alternative models like problem-solving through informal counseling, verbal warnings and pre-arrest diversion should be preferable to citations, and citations should be preferable to arrests.<sup>440</sup> For low-level crimes, arrest should be a last resort. MPD officers should refrain from making an arrest unless doing so (1) reasonably advances the goal of public safety or addresses significant and chronic community disorder; and (2) the situation cannot be resolved in a less intrusive manner.

For public health reasons, the COVID-19 pandemic forced law enforcement agencies across the country to modify arrest and detention practices by authorizing citations instead of custodial detention for many less serious charges. MPD was one of those agencies.<sup>441</sup> In response to a Superior Court order and Mayor Bowser’s declaration of a public health emergency in March 2020, MPD modified its “citation release” policy by authorizing post-booking release of individuals arrested for many low-level crimes.<sup>442</sup> It is important to understand, however, that this modification to MPD’s “citation release” policy has not authorized officers to issue citations in lieu of arrest *on the street* and thus avoid taking individuals to an MPD station for booking. Rather, it authorizes booking officers to release individuals from the station with a citation *after* they have been arrested, taken to the station, and booked. Individuals avoid going to jail, but they are still arrested and taken into custody. District law does allow for citations in lieu of arrest on the street, a practice called “field arrests” in the DC Code. But even if the pandemic has led MPD to utilize “citation release” more frequently, it has not produced greater reliance on “field arrests.” That is because the DC Code, specifically DC Code 23-584, substantially restricts MPD’s ability to make “field arrests” for low-level offenses—even if now, during the pandemic, officers have greater ability to utilize “citation release.” Most notably, DC Code 23-584 permits MPD to authorize field arrests only for misdemeanors prosecuted by the DC Office of Attorney General; it excludes offenses prosecuted by the U.S. Attorney’s Office. As a result, District law currently excludes the possibility of citation in lieu of release for a host of low-level offenses.

Without constraints like DC Code 23-584, cities across the country have gone further than the District in response to the pandemic. From St. Clair County, Alabama to San Marcos, Texas to Denver, Colorado to Portland, Oregon, they have authorized not only citation-after-booking, like MPD, but citation *in lieu of* arrest—or citations without booking—for low-level offenses.<sup>443</sup> Even before the pandemic, organizations as diverse as the National League of Cities and the International Association of Chiefs of Police produced reports touting citation in lieu of arrest for low-level crimes as a potential means of preserving public safety while promoting the efficient use of officer time, saving money on jail costs, and avoiding personal and familial disruption for the accused.<sup>444</sup>

As the District’s Justice and Jails Task Force recently noted, the impact of permanently amending the DC Code and MPD policy to require greater use of citation in lieu of arrest (or even citation release) could be profound: “An

estimated 3,144 people booked into DOC custody in 2018 would have been eligible for non-custodial citation or arrest under MPD's new citation release orders and emergency changes to the law governing field arrest. This accounts for about 80% of all people booked at DOC unsentenced on misdemeanor or felony charges, or 219 people in DOC's average daily population."<sup>445</sup>

There is little or nothing to commend arrests for low-level offenses. They disrupt the lives of those arrested (some of whom should be diverted to behavioral health, substance abuse, or youth-centered services, as other sections of this report recommend). They consume MPD, Department of Corrections, and judicial resources. And they undermine community trust in MPD without any proven impact on the rate of serious crime. Amending the DC Code and MPD policy to require field arrests under all the circumstances enumerated in current MPD EO 20-011 would be a significant step toward full adoption of a harm reduction approach to policing.

- 16. Recommendation: The Council should make permanent Section 114 of Act 23-336 repealing DC Code 5-115.03, which makes it a two-year misdemeanor for an officer not to make an arrest for an offense committed in their presence.**

#### **Discussion**

The text of DC Code 5-115.03, without exception, requires an officer to make an arrest for any crime committed in their presence. As the Council recognized when it voted to repeal this antiquated statute in Subtitle J of Act 23-335, the statute is antithetical to a harm reduction approach to policing. For all the reasons set forth in the immediately preceding recommendation, which calls for adoption of a presumption-of-citation for low-level offenses, it makes no sense to require officers to always make an arrest for a crime committed in their presence. A most effective and least intrusive approach to policing requires officers to think critically and problem-solve, and thus to give verbal warnings or issue citations when appropriate, *not* to reflexively make arrests. Indeed, in some situations, MPD policy already directs officers to engage with people in a manner that may not result in arrest. In other situations, requiring an officer to make an arrest may compromise the officer's safety, the arrestee's safety, or the safety of a third party.

Previously, the District's Criminal Code Reform Commission drafted a report recommending the repeal of DC Code 5-115.03 in 2018.<sup>446</sup> The Council should eliminate the law for good.

- 17. Recommendation: The Council should make permanent Section 108 of Act 23-336 repealing DC Code 22-3312.03, which prohibits wearing hoods or masks with intent to discriminate, intimidate, or break the law.**

#### **Discussion**

DC Code 22-3312.03, enacted in 1983, was intended to prevent hate groups like the Ku Klux Klan from intimidating people while wearing hoods and masks. Instead, because it is written so broadly and can be applied so subjectively (e.g., it prohibits wearing a hood or mask in public "where it is probable that reasonable persons will be put in fear for their personal safety by the defendant's actions, with reckless disregard for that probability," or "while engaged in conduct prohibited by civil or criminal law, with the intent of avoiding identification"), the law has been used to stop, pat down and even charge District residents, often minors who are 17 or 18 years old, for wearing hoodies. The Council was right to repeal the statute in Subtitle E of Act 23-336. It should make the repeal permanent.

#### IV. RESTRICTING AND MONITORING THE USE OF FORCE

18. **Recommendation:** The Council should revisit and amend Sections 101 and 102 of Act 23-336, which make the use of neck restraints a felony under DC Code 5-125, by: (1) expanding the prohibited uses of force beyond “neck restraints” to include other means of asphyxiation, such as applications of force causing positional asphyxia; (2) not making violation of these prohibitions a felony and eliminating the provision in DC Code 5-125.03 making violation a misdemeanor; and (3) including language in DC Code 5-125.03 making clear that alleged violations may be prosecuted under existing assault or homicide statutes and that execution of public duty is not a defense.

##### Discussion

The use of neck restraints by police officers is dangerous, potentially fatal, and unnecessary. When necessary, other non-lethal means of restraint exist. As neurologists from Massachusetts General Hospital recently wrote in a peer-reviewed *Journal of the American Medical Association* article concluding that neck restraints are unjustifiable, applying to the neck a weight as light as a house cat can restrict blood flow to the brain enough to cause stroke, seizure, permanent disability, or death.<sup>447</sup>

Like many other major city police departments, MPD has prohibited the use of neck restraints for some time in its use of force policy (General Order 901.07, “Neck Restraints”). In the wake of the killing of George Floyd, prohibitions like MPD’s have become law in numerous states and cities, including California, Connecticut, Florida, New York, Washington state, Austin, Chicago, Denver, Houston, Minneapolis, Phoenix, and Seattle.<sup>448</sup> Sections 101 and 102 of Act 23-336 similarly refines existing prohibitions on neck restraints by broadening the types of prohibited restraints and by increasing the penalties for violating the prohibitions.

While the Council is right to want to fortify existing law, the Commission recommends a modified approach. *First*, because there are restraints other than neck restraints that cause asphyxia, including certain restraints that cause positional asphyxia (e.g., “prone restraint,” or “hogtying” an arrestee face down, especially with a knee in their back<sup>449</sup>), the prohibited types of restraints should be expanded beyond “neck restraints.” *Second*, the Council should resist the temptation to address every public safety issue by adding a new provision to the criminal code or by increasing the severity of punishment under the code. The DC Code is expansive enough as is. With a variety of assault and homicide statutes on the books, the code already makes it a crime for a police officer to use illegitimate, asphyxiating restraints when applying force. Rather than making the use of such restraints a new felony, the Council should eliminate the existing misdemeanor in DC Code 5-125.01 and instead amend the statute to provide that the use of such restraints may be prosecuted under one of the existing assault or homicide statutes, according to its severity. Further, to make clear that such restraints are never authorized, the Council should amend DC Code 5-125.01 to eliminate the execution of public duty defense, which officers sometimes invoke when charged with ordinary criminal offenses for using excessive force.

19. **Recommendation:** The Council should make permanent Section 119 of Act 23-336, which restricts the use of deadly force in DC Code 5-337.01.

##### Discussion

Some have described certain deadly police encounters, particularly police shootings, as “lawful but awful,” because while they might not violate the Constitution, they are nevertheless precipitated by unnecessarily aggressive,

improper tactics.<sup>450</sup> Having too frequently taken the lives of unarmed Black men, “lawful but awful” police shootings have appropriately animated state and local legislatures to consider new laws that would fortify the constitutional standard.<sup>451</sup>

Section 119 of Act 23-336 is such a law. It incorporates current best practices for use of force. Drawn from well-known sources such as the Report of the President’s Task Force on 21st Century Policing and the Police Executive Research Forum’s widely-used “ICAT” guide,<sup>452</sup> these best practices have been part of MPD policy and training for several years. Section 119, therefore, does not impose obligations on MPD officers beyond those they already have. It prohibits deadly force unless (1) an officer reasonably believes such force is immediately necessary for self-protection or to protect others; (2) such force is “reasonable, given the totality of the circumstances;” and (3) such force is used only after exhausting all other feasible options under the circumstances. Section 119 thus properly requires officers not only to act reasonably at the precise moment they decide to use deadly force, as the Constitution demands, but also to act prudently to avoid ever reaching that moment in the first place.

In any case challenging an officer’s use of deadly force, Section 119 requires a trier of fact to consider not only whether the officer’s fear under the circumstances was reasonable, but also whether the subject had or appeared to have a weapon and refused to put it down; whether the officer first tried to de-escalate the encounter by using communication skills, slowing things down, maintaining a safe distance and utilizing cover; whether the officer avoided escalating the encounter; and whether the officer used less-than-lethal force before deploying deadly force.

Section 119 should be made permanent. Like MPD’s Mission and Value Statement and MPD policies and training on use of force, Section 119 promotes the sanctity of human life by requiring officers not simply to act reasonably at the moment they decide to shoot, but to do what they can to avoid putting themselves in that situation.

**20. Recommendation: The Council should make permanent Section 120 of Act 23-336, which restricts purchase of various military weaponry.**

**Discussion**

Over the past several decades, local law enforcement has become increasingly militarized, in part because of an influx of money and military-style supplies from the federal government.<sup>453</sup> Regression analyses show that this creeping militarization is associated with an increase in officer-involved fatalities.<sup>454</sup> According to the National Academy of Sciences, militarization of police has not only caused more civilian deaths and failed at preventing more officer deaths, but also has failed to reduce rates of violent crime while simultaneously eroding public trust and confidence in law enforcement.<sup>455</sup>

To move MPD away from a harmful and ineffectual warrior model of policing, the Council restricted the purchase and use of specific types of military weaponry in Act 23-336, and further required MPD to notify the community whenever it requests or acquires equipment through a federal government program. For the same reason, the Council should make these provisions permanent.

**21. Recommendation: To fulfill its obligations under DC Code 5-107.02(b)(3) & (4), which require training on use of force, MPD should reinforce the importance of critical decision-making, de-escalation, avoiding escalation, and using force only if necessary, reasonable, and proportional, by providing the Police**

**Executive Research Forum’s full ICAT (“Integrating Communications, Assessment and Tactics”) training to all recruits in the Academy and at least eight hours of annual refresher in-service ICAT training to officers.**

### **Discussion**

The Police Executive Research Forum’s ICAT training is regarded as the gold standard for use of force training. It emphasizes the development and use of critical thinking skills to de-escalate police encounters by communicating effectively with subjects, taking time to slow things down, and maintaining proper distance and cover for officer safety. Major city police departments across the country have incorporated ICAT into their use of force regime. MPD is one of them. From the training materials the Commission reviewed, however, it does not appear that MPD has incorporated the full ICAT program into both recruit and in-service training. To fulfill its statutory use of force training obligations, MPD should do so.

**22. Recommendation: The Council should make permanent Section 107 of Act 23-336, which expands the membership of the Use of Force Review Board under DC Code 5-1140.**

### **Discussion**

In early 2021, the Commission heard from Michael Bromwich, a consultant to the district auditor, who had been leading a team that was conducting a comprehensive independent assessment of MPD officer-involved shootings in 2018-19.<sup>456</sup> The assessment includes an evaluation of the work of the Use of Force Review Board. Among Bromwich’s observations is that, in reviewing officer-involved shootings and the accompanying investigations of internal affairs investigators, the Use of Force Review Board has not properly considered officer compliance with the tactical de-escalation directives in MPD policy and training. It has focused on whether officers were justified in using deadly force at the moment they decided to shoot, rather than examining more broadly all precipitating and subsequent events. The board also has not provided detailed explanations for its findings. And according to Bromwich, the board has not meaningfully embraced its role of making recommendations regarding policies, training, supervision, tactics, commendations, and discipline based on its reviews. By design, the board not only reviews critical incidents, but also considers whether organizational change is needed to prevent them in the future.

Until the passage in 2020 of Section 107 of Act 23-336, the board did not include any voting civilian members. This provision expanded the composition of the board to include five new voting civilian members—three Mayoral appointees and two Council appointees—and also provided a vote to the Executive Director of the Office of Police Complaints, who previously had no vote.

The Council should make Section 107 permanent. Given the observations of the auditor’s independent consultant, the addition of voting civilian members should help ensure that, consistent with its mission, the board’s reviews of police shootings (1) examine the entire series of events surrounding such shootings—not simply the moment deadly force was deployed; and (2) include consideration of recommendations regarding policy, training, supervision, tactics, commendations, and discipline. Under Section VIII, the board will not make ultimate findings on compliance with MPD policy.

## V. PROTECTING FIRST AMENDMENT RIGHTS

23. **Recommendation:** The Council should make permanent Section 112 of Act 23-336, which amends the First Amendment Assemblies Act of 2004 to require the uniforms and helmets of MPD officers policing First Amendment assemblies to identify their affiliation with local law enforcement.
24. **Recommendation:** The Council should make permanent Section 121 of Act 23-336, which amends the First Amendment Assemblies Act of 2004 to restrict the use of chemical weapons, less-than-lethal projectiles, and riot gear during First Amendment assemblies.
25. **Recommendation:** MPD should reinforce how the legitimacy of democratic governance turns on respect for First Amendment rights—particularly in the District, the site of substantial First Amendment activity—by providing at least eight hours of Academy training to recruits, and at least four hours of annual refresher in-service training to officers, on responding to First Amendment-protected activity, including protests and assemblies, speech and expression (including criticism of law enforcement), and the observation and recording of the actions of law enforcement officers.

### Discussion

The protests for racial justice in the summer of 2020 exposed certain law enforcement practices that are inimical to the First Amendment rights of free speech and assembly. These same practices embody the warrior policing model that is so antithetical to harm reduction principles. Federal law enforcement agents relied on two such practices when they violently suppressed a peaceful demonstration in Lafayette Square in the wake of the killing of George Floyd. First, certain agents dressed in full riot gear, with uniforms that did not identify them individually and did not even identify the agency they worked for. Second, certain agents aggressively and needlessly deployed tear gas and rubber bullets to disperse protestors.

Sections 112 and 121 of Act 23-336 recognize the problems with these practices and seek to prevent them. The Council should make these provisions permanent.

Section 112 properly requires MPD officers, during First Amendment assemblies, to wear uniforms that identify their affiliation with MPD. Because MPD officers often police protest activity with officers from other agencies, this requirement helpfully serves to distinguish officers who are local, with direct community ties, from those who are not. The requirement enables District residents to hold MPD and its officers accountable for their actions during protests. At the same time, it protects MPD officers who are carrying out their duties properly when officers from other agencies are not. At root, this requirement appropriately seeks to foster community trust in MPD.<sup>457</sup>

Section 121 properly prohibits the use of chemical weapons and less-lethal munitions during First Amendment assemblies and allows MPD officers to wear riot gear only when they face an immediate threat of significant bodily injury. This provision, too, is about promoting police legitimacy. It limits the extent to which officers may take actions that effectively put them at war with community members.<sup>458</sup> Section 121 is also about preventing police aggression. Rather than quelling the potential for violence, police use of riot gear and militaristic crowd control tactics escalates it.<sup>459</sup> For these reasons, the President's Task Force on 21st Century Policing recommended that law enforcement respond to mass demonstrations with a “soft look” that reflects guardian model policing.<sup>460</sup>

## VII. ENSURING THE QUALITY, LAWFULNESS, AND ACCOUNTABILITY OF SPECIAL POLICE

26. **Recommendation:** The Council should disarm special police officers in public housing, including those employed by the District of Columbia Housing Authority (DCHA). This does not include sworn police officers employed by DCHA.
27. **Recommendation:** The Council should enact the Special Police Officer Oversight Amendment Act of 2019 and further require that any special police officer who has the authority to carry a weapon or make an arrest:
- A. Comply with all MPD regulations.
  - B. Receive pre-service and in-service training comparable to MPD officers, including commensurate training on de-escalation, avoiding escalation, and use of force (including neck restraints, knees in back, and positional asphyxia); behavioral health awareness and crisis intervention; stops, searches, and arrests; cultural competency and racial equity; sexual harassment; drug overdose response; DC criminal law and procedure; and evacuation and first aid.
  - C. Subject to MPD internal affairs and civilian oversight.
28. **Recommendation:** The Council should strictly prohibit special police officers from pursuing subjects beyond their jurisdictional boundaries.
29. **Recommendation:** The Council should require regular, periodic public reporting on stops, searches, arrests, and uses of force by special police.

### Discussion

Over 7,500 privately employed special police officers (SPOs) patrol public housing, hospitals, schools, and other spaces in the District. These SPOs have authority similar to that of MPD officers. They can stop, search, and arrest people. They can issue notices barring people from certain property. They can use force, including deadly force. Indeed, many of them, including those who patrol public housing, are armed. Yet despite possessing such authority, SPOs undergo only a fraction of the training that MPD officers receive—40-56 hours before being armed compared to the 28 weeks of recruit training for MPD officers. The dearth of training shows. In recent years, SPOs have been the subject of numerous complaints involving brutality, sexual harassment, gross negligence, and suspicion-less barring notices that keep families apart.<sup>461</sup>

In recognition of the dangers posed by SPOs, in February 2021, the District's Jails and Justice Task Force made a series of recommendations to ensure proper SPO training and oversight. The task force advocates amending the DC Code "to require that any special police officer who has the authority to carry a weapon or make an arrest comply with all MPD regulations; receive pre-service and in-service training comparable to MPD; be subjected to MPD internal affairs and civilian oversight; and provide periodic public reporting on arrests, uses of force, stops, and searches."

These recommendations are entirely appropriate. The Commission adopts them without exception.

SPO training, especially for SPOs who will be armed, must be far more extensive, and should include the same training MPD officers receive on, among other things, de-escalation and use of force, including firearm use and defensive tactics; stops, searches and arrests; behavioral health awareness; interacting with youth; fair and impartial policing; and cultural competency. Other jurisdictions have adopted similar measures. As DC Justice Lab reported in 2020: “For example, New Jersey requires 80 hours of training for unarmed SPOs and 460 hours for armed SPOs. Boston mandates 100 hours of basic instruction and 60 hours of firearms training. And, Maryland recently passed legislation requiring at least 80 hours of training for SPOs that includes ‘criminal law, constitutional procedural requirements relating to search, seizure, and arrests and the appropriate use of force.’”<sup>462</sup> Councilmember Kenyan McDuffie introduced similar legislation in 2015,<sup>463</sup> but it did not pass.

Meaningful oversight for SPOs is equally vital. In 2019, Councilmember Allen introduced the Special Police Oversight Amendment Act. Every Councilmember co-sponsored the bill, which would transfer all authority to investigate complaints against SPOs to the Office of Police Complaints.<sup>464</sup> In introducing the legislation, Councilmember Allen observed that “investigations into complaints against Special Police Officers are inconsistently conducted and enforced under current regulations that split responsibility between MPD, DCRA, and even the company where the Special Police Officer is employed.”<sup>465</sup> News reports showed that MPD does not even retain complaints against SPOs.<sup>466</sup> The Council should revive and pass Councilmember Allen’s 2019 bill, amending DC Code 5–1101, 7-2502, 7-2509, 22-4505, and 23-582 to provide for proper SPO oversight.

For all the same reasons why MPD must rigorously collect, maintain, analyze, and report data on its officers’ stops, searches, arrests, and uses of force (see recommendations above), the Council should enact legislation requiring the Mayor to do likewise for SPOs. Transparency and accountability are no less important for SPOs than they are for MPD.

In addition to adopting the recommendations of the Jails and Justice Task Force, the Commission recommends that the Council pass legislation to disarm private SPOs in public housing who are not employed and trained by the DC Housing Authority. Especially given the presence of armed DCHA officers, as well as the available services of armed MPD officers, the risks these privately hired SPOs pose substantially outweigh the benefits.

Finally, the Council should enact legislation prohibiting SPOs from pursuing suspects beyond the properties they are hired to police. In 2014, the District Inspector General found that, by policing beyond their authorized boundaries, SPOs violate District regulations, place themselves and the public in danger, and create a risk of liability for any improper actions.<sup>467</sup> Given the track record of SPOs, these risks are genuine. Further, there is no reason for SPOs to exceed their jurisdiction: SPOs can and do coordinate with MPD, so more qualified, better trained MPD officers can respond if a suspect flees the property an SPO is guarding.

## VII. UTILIZING SURVEILLANCE TECHNOLOGY FAIRLY AND JUDICIOUSLY

**30. Recommendation:** The Council should pass legislation to ensure that decisions about whether District agencies should acquire, use, or share surveillance technologies<sup>468</sup> are made with thoughtful consideration and buy-in from the public and elected lawmakers, and that the operation of approved technologies is governed by rules that safeguard residents’ rights and provide transparency. This legislation should, among other provisions set out below, include the creation of a Surveillance Advisory Group and establish a private right of action for violation of Council-approved rules for the acquisition or use of any surveillance technology.

## Discussion

The Community Oversight of Surveillance-DC (COS-DC), a local coalition of groups based in the District, has proposed legislation that would provide transparency and accountability for government use of surveillance technologies. COS-DC has testified before the Council, setting out in detail the need for such legislation.<sup>469</sup> The legislation proposed by COS-DC is consistent with the nationwide effort to ensure community control over police surveillance.<sup>470</sup> Consistent with the legislation proposed by COS-DC, the Commission recommends that the Council adopt legislation to:

- ☒ Create a transparent and public process for considering the acquisition, use, and sharing of surveillance technologies by District agencies, by requiring Council approval following a public hearing.
- ☒ Require that agencies create and obtain Council approval for written rules containing specific guidelines for use of any surveillance technology. These rules should include surveillance impact assessments that explain how the technology works and how it will impact the community.
- ☒ Require periodic evaluations of the District's use of each surveillance technology to ensure that the costs do not outweigh the potential benefits. These evaluations should consider the impact of surveillance on residents and their rights, as well as whether the surveillance technology is, in fact, furthering public safety.
- ☒ Create a surveillance advisory group to advise and help inform both District agencies and the Council about the civil rights and civil liberties risks of the use of specific surveillance technologies in the District, including recommendations on particular technologies or uses that should be banned. The surveillance advisory group should:
  - Include a majority of members that represent equity-focused organizations serving or protecting the rights of communities and groups historically subject to disproportionate surveillance.
  - Receive support from an individual or entity with expertise in public surveillance and data collection. This individual or entity will perform the work of the Group, at its direction, and will be appropriately compensated.
  - Assess the costs and benefits to District residents of any proposed surveillance technology, including providing advice on protecting privacy rights and promoting racial and socio-economic equity in connection with any proposed acquisition of surveillance technology.
  - Draft for Council consideration model legislation on privacy, data protection, and racial and socio-economic equity, including but not limited to provisions that (1) establish judicially enforceable restrictions on police use of surveillance technology against individuals in criminal investigations; and (2) create a meaningful, expeditious private right of action for individuals whose rights are violated.

- Submit periodic reports and recommendations to the Council regarding (1) the use of surveillance technologies by District agencies, including their impact on equity; and (2) the development of new policies, and the modification of existing policies, regarding privacy and data retention for surveillance technologies.
- Provide the Council with analyses of pending federal or local legislation relevant to the acquisition or use of technology that collects, stores, transmits, handles, or processes data on individuals.
- Provide the Council with analyses regarding the acquisition or use of any surveillance or data collection technology, including but not limited to police technology, that specifically considers the extent to which the technology exacerbates racial inequity by replicating existing racial inequity, masking existing racial inequity, transferring racial inequity from one system to another (e.g., from commercial users to policing), exacerbating the harms of current racial inequity, or compromising oversight of racial inequity.
- Conduct public hearings and provide an annual written report to the Council.
- Draft and make public, as needed, any other reports in addition to those specified above.

These recommendations amplify COS-DC's proposed legislation by setting out in greater detail the functions of the surveillance advisory group and by providing for a private right of action for violations of law. This detail reflects the experience in other cities with similar advisory boards or surveillance laws, and recent conversations between Commissioners and members of COS-DC and with other surveillance technology experts.<sup>471</sup> The experiences of other cities make clear, for example, the need to ensure that the advisory board is adequately resourced to undertake the responsibilities with which it is tasked.

These recommendations also explicitly emphasize the need to ensure that surveillance technologies, especially those used in policing, do not exacerbate or avoidably perpetuate racial inequity. These recommendations, for example, adopt the rubric created by Georgetown Law Professor Laura Moy, an expert on the nexus between surveillance and racial inequity, for evaluating the impact of police surveillance technologies on racial disparities in policing and the criminal legal system.<sup>472</sup>

# **Section VI: Developmentally Appropriate: Taking Special Measures to Protect Young People from Over-Policing and Criminalization**

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## **OVERVIEW**

The cognitive abilities of children and young people differ greatly from those of adults. The data are abundantly clear: the adolescent brain is still developing. Advances in neurological research explicitly show that a person's brain continues to mature throughout adolescence and into their mid-20s. Their brain differs from the fully developed adult brain both structurally and in how it reacts to chemicals produced by the body, such as dopamine, which in turn influences behavior.<sup>473</sup>

Adolescents are more likely to be swayed by peers, engage in risky and impulsive behaviors, and experience drastic mood swings.<sup>474</sup> "These differences do not mean that youth behavior that is harmful to themselves or others should be ignored," according to the Coalition for Juvenile Justice. "Rather, it means that courts, agencies and practitioners should use this knowledge to inform and perhaps modify their practices and policies."<sup>475</sup> This is especially true for youth of color and other marginalized youth who are routinely over-criminalized.

In *Reforming Juvenile Justice*, the National Research Council of the National Academies states, “there is sizable literature indicating that minority youth are more likely than white youth to be stopped, arrested, and subsequently referred to court by police.”<sup>476</sup> In fact, Black boys are frequently harassed and mistreated, even when they are not engaged in any criminal behavior:

...Black boys are policed like no other demographic. They are policed on the street, in the mall, in school, in their homes, and on social media. Police stop Black boys on the vaguest of descriptions – *Black boys running, two Black males in jeans, one in a gray hoodie*. Young Black males are treated as if they are ‘out of place’ not only when they are in white, middle-class neighborhoods, but also when they are hanging out in public spaces or sitting on their own front porches.<sup>477</sup>

The criminalization and biased treatment of young people of color extends to girls, as well. A 2017 study conducted by the Georgetown Law Center on Poverty and Inequality found that Black girls as young as five years old are viewed as less needing of protection, support, and comfort than white girls.<sup>478</sup> This helps explain why the percentage of Black girls entering the juvenile legal system in DC has risen dramatically in recent years. According to Rights4Girls, Black girls in DC are 30 times more likely to be arrested than white boys and girls combined.<sup>479</sup> This disproportionate treatment of young people of color by the legal system is exacerbated when they identify as LGBTQ. Research shows that LGBTQ/GNCT youth are also overrepresented in the juvenile legal system.<sup>480</sup>

The developing brain, in conjunction with systemic racism and individual bias, also means that youth of color are more likely to be physically harmed in encounters with police. A Bureau of Justice Statistics Survey found that between 1998 and 2008, youth aged 16-18 comprised less than eight percent of the U.S. population but were involved in 30% of police use of force cases, with Black and Latinx youth more likely to experience use of force. In 2016 nearly 63% of youth killed by police were Black or Latinx,<sup>481</sup> a number out of proportion with their numbers in the population at large.

Black, Brown, Indigenous, and other youth of color, understand their relationship with law enforcement in the context of a long history of over-policing and criminalization of their families and communities. ... The weight of all this, coupled with their own natural immaturity, means that youth of color often end up sacrificing their legal rights, with potentially serious repercussions for their futures.

Black, Brown, Indigenous, and other youth of color understand their relationship with law enforcement in the context of a long history of over-policing and criminalization of their families and communities.<sup>482</sup> At an early age, they learn the system is stacked against them; they learn to fear and avoid police, and to always comply with officers, regardless of the situation. The weight of all this, coupled with their own age-related immaturity, means that youth of color often end up sacrificing their legal rights, with potentially serious repercussions for their futures.

Even as the MPD creates more youth-focused programs like the Officer Friendly program and the Youth Advisory Council, individual officers continue to over-police and punish youth of color. In 2017, MPD officers handcuffed two Black teenagers who were selling water on the National Mall without a permit.<sup>483</sup> Encounters like these are not rare.

The Commission heard from a panel of young people of color regarding their experiences with MPD. One youth, out of fear of retaliation, chose to write a letter that was read aloud by another young person instead of personally appearing before the Commission. The letter describes how she and her mother, both recent immigrants, were arrested for selling food without a permit, which they were doing to support their family. The repercussions didn't end with arrest. The letter describes the child protection case that followed, which threatened to break apart this girl's family. Such uses of law enforcement do not enhance public safety but, as one youth panelist said, "make us feel more unsafe."

Traumatic encounters with police not only affect youth in the moment and days thereafter, but also shape how they and their peers view police—perspectives they carry with them into adulthood. As noted by DC Justice Lab, tactics such as "jump-outs"<sup>484</sup> that routinely take place in predominantly Black neighborhoods in DC "undermine community trust in law enforcement and do not improve public safety."<sup>485</sup>

While the previous section of this report calls for ending or significantly reforming a range of ineffective, harmful police practices that affect DC residents of all ages—including ending "jump-outs"—this section calls for urgently needed changes specifically to limit punitive encounters between police and youth; and when such encounters cannot be avoided, to ensure they are developmentally appropriate. For these changes to have the widest possible benefit and contribute to ending the unnecessary criminalization of individuals who are still growing and maturing, the Council must expand the legal definition of a child to include all persons under the age of 21.

DC's youth are DC's future. It's time to transform the District into a city where all young people feel safe, supported, and valued. Changing policing is part of building that city, especially for Black and Brown youth, immigrant youth, and LGBTQ youth who justifiably fear and mistrust police officers who should be among the many forces protecting them.

## Recommendations

1. **Recommendation:** DC Council should amend DC Code §16-2301 to define a child as a person under 21 years of age. Specifically:

**1 (a) Recommendation:** The DC Council should immediately amend DC Code § 16-2301(3) to read: "The term "child" means an individual who is under 18 years of age as well as a person under the age of twenty-one who is charged with a delinquent act committed before they attained the age of eighteen."

**1 (b) Recommendation:** By FY 2025, the DC Council should raise the age of original jurisdiction in delinquency court to age 21.

## Discussion

Current scientific evidence is clear: the age of 18 does not correspond with full cognitive or behavioral development. Children and adolescents are different from adults, and the District should recognize them as such. As children mature, their ability to self-regulate in emotionally charged contexts improves, they become less likely to succumb to peer pressure and are more likely to display good judgment.<sup>486</sup> As children develop and grow into adults, they are more likely to decrease their engagement in risky behavior—the type of behavior that often leads to encounters between children and the police. The National Research Council's seminal report, *Reforming Juvenile Justice: A Developmental Approach*, describes how "[m]uch adolescent involvement in illegal activity is an extension of the

kind of risk taking that is part of the developmental process of identity formation, and most adolescents mature out of these tendencies.”<sup>487</sup>

With both scientific evidence and justice in mind, the Commission echoes the recommendations of the District’s Task Force on Jails and Justice in calling for the definition of “child” to include any person under 21 years of age.<sup>488</sup> Adapting the District’s understanding of who constitutes a child will ensure that 18- to 21-year-olds are able to access age-appropriate services, including when interacting with the police. Age cannot be the only consideration for police when interacting with an individual, but it is an important one. Children take risks, act impulsively, and engage in poor judgment—and responding with severe sanctions, prosecution, or punishment “may actually increase recidivism and jeopardize the development and mental health of juveniles.”<sup>489</sup>

The Commission urges the DC Council to align policies and practices with the latest consensus among social scientists, medical professionals, and child development experts. The age of 18, though a major social milestone for many young people, does not represent the end of cognitive or behavioral development. Although the brain continues to develop until the age of 26, the Commission recognizes the challenges and complexities of aligning policy to both protect youth and ensure the rights granted by reaching the age of legal adulthood. The Commission therefore urges the Council to amend DC Code 16-2301 to define a child as a person under 21 years of age.

Even as the MPD creates more youth-focused programs like the Officer Friendly program and the Youth Advisory Council, individual officers continue to over-police and punish youth of color. ...It’s time to transform the District into a city where all young people feel safe, supported, and valued. Changing policing is part of building that city...

The Commission recognizes the great nuance and care that must be taken in moving forward legislation of this scope and gravity. The Commission endorses this recommendation only if it can be implemented so as to ensure the following: (1) the parents or guardians of children age 18 years or older should not be brought into the abuse/neglect system; (2) the juvenile justice system must continue to recognize that the needs of young children (17 years and younger) may differ from those of older youth, and should provide tailored and age-appropriate responses; and (3) the implementation of this recommendation should in no way impede upon the rights and privileges granted to individuals at the age of 18.

2. **Recommendation: Adopt more robust protections and procedures when applying *Miranda* rights to children.**

**2(a) Recommendation:** MPD should amend the “Interacting with Juveniles” General Order and the Council should amend DC Code § 16-2304 to include an outline detailing police interrogation procedures for youth, including the requirement for an attorney to be present for the waiving of their *Miranda* rights. The amendment should also include a requirement that police use the following, developmentally appropriate language when reading youth their *Miranda* rights: “[Your] rights include but are not limited to: (a) the right to remain silent, (b) anything you say can be used against you, (c) the right to an attorney, (d) the right to have someone else pay for the attorney, (e) the right to talk to an attorney immediately before continuing to answer questions, (f) the refusal to give a statement cannot be used as evidence of guilt, (g) making a statement does not mean you will be released from custody or that you will not be charged, (h) you can be

held in pretrial detention for the most minor offenses, and (i) you can be committed until age 21 for the most minor offenses."<sup>490</sup>

**2(b) Recommendation:** The Council should amend DC Code § 16-2316 so that statements made by youth under the age of 21 in police interrogation will not be admissible unless the youth: (1) are read their *Miranda* rights by a law enforcement officer in a developmentally appropriate manner as defined in recommendation 1(a) and with counsel; (2) have the opportunity to consult with counsel before making a waiver; and (3) in the presence of their attorney, they make a knowing, intelligent, and voluntary waiver of their rights.

**2(c) Recommendation:** The Council should work with the Public Defender Service for the District of Columbia and the MPD to institute legal counsel in police stations. Both youth and adults should be guaranteed legal counsel upon their arrest, prior to any questioning by the police. Public defenders or private counsel should be allowed access to police stations 24 hours a day to communicate with and otherwise represent their clients and to sit in on interviews between police and individuals suspected of a crime.

## Discussion

More robust *Miranda* rights protections and procedures are necessary for young people because they are particularly vulnerable to police coercion. This vulnerability is due to their propensity to not fully understand and exercise their *Miranda* rights and to be more easily intimidated by police. This recommendation would both create tighter boundaries around the circumstances under which youth may waive their rights and also improve the language used to communicate their rights and the potential consequences for waiving them.

According to the DC Justice Lab and the Georgetown Juvenile Justice Initiative, most youth do not adequately understand their *Miranda* rights.<sup>491</sup> In her presentation to the Commission, Professor Kristin Henning states that “[y]outh are not mentally or emotionally equipped to provide informed consent. [They are] less likely to know their rights, [and] less able to make decisions which weigh short-term gains against longer term rewards.”<sup>492</sup> In fact, young people disproportionately make false confessions because of their difficulty understanding their rights and because of their psychosocial immaturity. These false confessions may lead to wrongful convictions. Furthermore, disabilities and economic, social, and educational disparities are all prevalent factors for a large proportion of system-involved youth. Even though these factors diminish youths’ ability to make well-informed decisions about their rights, the current practice for *Miranda* rights waivers for youth does not take these factors into consideration. Therefore, the Commission’s recommendations should be adopted to “ensure that waivers are actually knowing, intelligent, and voluntary; prevent false confessions; and reduce wrongful convictions.”<sup>493</sup>

Additionally, there are racial implications for the policies that guide police interactions with youth in DC. Black youth are disproportionately arrested in the District, and are therefore most negatively impacted by the lack of MPD procedures that reflect the developmental differences between youth and adults.<sup>494</sup> This recommendation seeks to protect these youth who are not only vulnerable due to their age, but also due to historical tensions between the police and the Black community, which can manifest in anxious responses caused by “stereotype threat:” “awareness of stereotypes associating race with criminality [that] can instill hopelessness in minority suspects, undermining confidence that their claims of innocence will be believed . . . [they] will do anything to end the interrogation—even confess falsely.”<sup>495</sup> The compulsion of Black youth to be deferential to police, coupled with the

still-developing cognitive abilities of adolescents, makes it critical for DC to implement a more robust *Miranda* that will diminish the impact of these social and psychological factors contributing to potentially negative outcomes for suspected youth.

Other jurisdictions have adopted more robust *Miranda* rights protections for youth, indicating that support for these reforms goes beyond advocacy in DC. In 2020, the California legislature adopted SB-203, which includes the following provision: “Prior to a custodial interrogation, and before the waiver of any *Miranda* rights, a youth 17 years of age or younger shall consult with legal counsel in person, by telephone, or by video conference. The consultation may not be waived.”<sup>496</sup> With California and other states, including Illinois<sup>497</sup> and West Virginia, as pioneers in this area of reform, DC should move forward with policies that go even further to ensure that the system is truly just for young people in the District, and pave the way for other jurisdictions that look to DC as a model of reform.

**3. Recommendation: MPD should institute policies and practices that would require police officers to prioritize referring youth to community resources.**

**3(a) Recommendation:** The District should provide annual trainings to the public on local community-based resources available and appropriate for serving young people, and the referral processes for those resources. MPD officers should be required to attend these trainings.

**3(b) Recommendation:** MPD should create performance evaluation structures or metrics that encourage police officers’ use of referrals to community resources for youth and young adults as the first resort (with arrests as a last resort if an officer can demonstrate the inability to make a community referral).

**3(c) Recommendation:** Adequately fund community resources to ensure that they are able to provide youth, families, and caregivers across all wards with 24-7 access to culturally and linguistically competent opportunities.

## **Discussion**

Broad criminal and juvenile justice reform trends moving away from punishment and toward prevention have led to a proliferation of diversion programs, especially in juvenile justice settings. Although diversion can happen at various points before, during, or after the trial process, police-led diversion may be especially beneficial as it keeps individuals out of the criminal legal system as much as possible, which can mitigate the collateral consequences of system involvement.<sup>498</sup> The Department currently utilizes various diversion programs and methods, for both youth and adults, in a limited capacity.

MPD launched the DC Pre-arrest Diversion Pilot Program in April 2018 to divert adults who would otherwise be arrested for a non-violent misdemeanor charge and who exhibit either a mental health condition or a substance use disorder.<sup>499</sup> The program is limited in that only officers trained in Pre-Arrest Diversion (PAD), assigned to specific patrol service areas, and operating during pre-specified time periods are authorized to implement PAD. In addition, PAD can only be utilized for adults who would otherwise be arrested for a non-violent misdemeanor and who exhibit either a mental health condition or substance use disorder. This drastically limits the potential for a police encounter with an adult to lead to diversion, rather than to an arrest.

The Department’s current practices regarding juvenile diversion offer a strong foundation upon which to develop and revise policy to ensure that youth in DC have opportunities to succeed. MPD’s juvenile diversion policies are far

more expansive than those for adults, and are reflected in General Order 305.01 (Interacting with Juveniles).<sup>500</sup> Further guidance for MPD officers when addressing suspected child abuse or neglect is outlined in General Order 30.06 (Child Abuse and Neglect).<sup>501</sup> It is clear that the Council and other leadership in the District have worked to ensure that many youth are diverted from the juvenile justice system upon, or after, police contact. However, more should be done to root these diversion processes in community-based programs, ensure that officers are trained to appropriately respond to youth in crisis, and to incentivize diversion for MPD officers and leadership.

The recommendations presented here address the need to prioritize and center police-led diversion within MPD. First, MPD should prioritize training all sworn officers to ensure that wherever diversion is possible, arrest or alternative sanctions are avoided. Officers often have a fair amount of discretion when confronting an individual suspected of a crime or infraction; therefore, it is imperative that structures be put in place to ensure that officers opt for diversion whenever possible.<sup>502</sup> Thus, in addition to comprehensive training, MPD leadership should review existing data<sup>503</sup> and reward officers who use their discretion to divert individuals from the criminal and juvenile justice systems (e.g., through promotions, recognition within the department, etc.).

4. **Recommendation: Decriminalize status offenses and specific offenses committed by youth (i.e., threats, disorderly conduct,<sup>504</sup> resisting,<sup>505</sup> failure to obey,<sup>506</sup> vending without a license,<sup>507</sup> offensive physical contact, version of assault,<sup>508</sup> possession of child pornography of themselves or their partner, and unlawful entry onto public property<sup>509</sup>). Amend DC Code Chapter 23 Title 16<sup>510</sup> to reflect these changes.**

**4(a) Recommendation:** Respond to persons in need of supervision (PINS) using community-based resources rather than through the juvenile justice system. Adopt legislation to remove all mentions of “PINS offenses” as prosecutable offenses from Chapter 23 of Title 16 of the DC Code, and make conforming amendments, including to the Attendance Accountability Act.

**4(b) Recommendation:** When PINS behaviors do occur, ensure multiple access points to services outside of law enforcement or juvenile justice agencies, including schools and community-based resources.

**4(c) Recommendation:** Prohibit law enforcement from transporting youth in instances of truancy or curfew violation.

**4(d) Recommendation:** Amend legislation such that specific offenses (i.e., theft, trespassing, injury of property, distribution of substances, possession of firearms) when committed by youth are not chargeable as a felony.

**4(e) Recommendation:** Disallow prosecution of children under 12 years of age.

## Discussion

To improve the wellbeing of youth in DC, the Council must take steps to end the practice of criminalizing childhood by reducing, if not eliminating, legal consequences for normal adolescent behavior and removing criminal legal consequences for especially young residents (i.e., youth under the age of 12). The Commission is in favor of reducing the number of youth entering the juvenile justice system and reinvesting the resources and cost-savings associated with that decrease into primary prevention supports and community-based programs that encourage positive youth development and limit risk to public safety.

Status offenses are noncriminal acts that are considered a law violation only because of a youth's status as a minor. This category of offenses does not account for developmental and trauma responses of young people compared to adults. In DC, a person who commits a status offense is referred to as a "child in need of supervision." DC Code § 16-2301 defines a "child in need of supervision" as:

a child who — (A)(i) subject to compulsory school attendance and habitually truant from school without justification; (ii) has committed an offense committable only by children; or (iii) is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; and (B) is in need of care or rehabilitation." Status offenses include truancy, habitually running away, curfew violations, and being habitually disobedient and ungovernable by a young person's parent(s) or guardian.<sup>511</sup>

Currently, MPD policies direct officers to "consider alternatives to formal arrest," including a "warning or diversion referral" when encountering a youth suspected of committing a status offense.<sup>512</sup> MPD's policy further dictates that "arrest[s] of a juvenile shall be limited to cases where members make all reasonable efforts to divert the juvenile from entry into the juvenile justice system, while recognizing that certain crimes require taking juveniles into immediate custody."<sup>513</sup> Relatedly, the Comprehensive Youth Justice Amendment Act, passed in 2016, removed secure detention as an option for youth accused of status offenses.

Despite these policies, responses to status offenses available under District law still include involvement in the juvenile justice system, with over 200 PINS cases filed in the Superior Court of the DC Family Court in 2017 and 2018. Under current practice, the DC Office of the Attorney General (OAG) reviews PINS cases to determine whether diversion or prosecution is warranted.

This involvement in the legal system can have detrimental consequences for young people, including an increased risk of engaging in future delinquent behaviors.<sup>514</sup> National best practice therefore suggests that the criminal system is not an appropriate avenue to address the needs of youth engaging in status offenses. Instead, best practice is to address the root causes of these behaviors by providing intensive individual and family services that address young people and their families' needs, thereby avoiding any justice system involvement.<sup>515</sup>

The Commission has adopted recommendations 4(a), 4(b), and 4(c) from the District of Columbia Juvenile Justice Advisory Group (JJAG), an advisory commission to the Mayor and other stakeholders on matters relevant to juvenile justice and delinquency prevention in the District. The JJAG has compiled expert input on best practices around the country (including from the Urban Institute and Coalition for Juvenile Justice), models from other leading jurisdictions, and local information to inform these recommendations. The JJAG ultimately included these recommendations in a 2020 report ("Create New Opportunities for 'Persons In Need of Supervision' (PINS) to Succeed Without Legal System Intervention"), which identifies ways in which the juvenile justice system could continue to shift toward strength-based approaches that connect youth and families to meaningful opportunities and supports, while still fulfilling its obligation to maintain public safety.

The JJAG found the District "currently has many services that can benefit youth and address the underlying causes of PINS behaviors. These services and supports include family and individual counseling, mentoring, emergency shelter, and case management. Some services are provided through the District government . . . [o]ther services are administered by private providers."<sup>516</sup>

These programs, however, "do not meet the needs of all youth who could benefit from them," and the JJAG identified many gaps in the services provided.<sup>517</sup> Notably, the JJAG determined, "youth and families should be able

to access help through any agency or organization. Access points must exist across all wards, including easily accessible public spaces, such as community centers and libraries. Assessment and service centers, or hubs, exist in communities across the country<sup>518</sup> to co-locate a holistic array of services and provide easy walk-in access to youth and families.<sup>519</sup> When the initial access point cannot provide needed services directly, there should be a “warm handoff” to the right service provider, with staff going with youth or families and sharing relevant information among providers to help start services without families repeating assessments. In addition, there should be consistent follow-up to make sure the services are helping.

In addition to ensuring multiple access points for services, the JJAG also explained that law enforcement should not be the only mechanism to transport youth out of unsafe situations or to services. Instead, the District should create a “Mobile Response Team” that would include “trained professionals and credible messengers who can steer youth toward services and recognize signs of harm or risk. Should the risk of harm to a young person be imminent, police are the best first line of defense, but young people in many other situations would be better served without the stigma and fear inherent in police contact.”<sup>520</sup>

By enacting changes guided by best practices, DC has the opportunity to be a national leader in responding to PINS behaviors. The District would also not be alone in significantly shifting its approach in this arena. In 2005, Connecticut ended the use of detention for status offenses.<sup>521</sup> Two years later the state created and funded a network of family support centers throughout the state to quickly identify and address the needs of young people and their families, to divert them away from the juvenile justice system, and allow them to remain in their communities. These centers were incredibly successful. Data from the Connecticut Court Support Services Division indicated that 70% fewer youth who were previously adjudicated delinquent for a status offense were subsequently arrested as delinquents or returned to the courts with new status offense petitions.<sup>522</sup> In 2015, Connecticut eliminated truancy as a status offense, and the state now requires schools and communities—and not the court—to develop appropriate responses to missed school days.<sup>523</sup> This change is projected to lead to a 70% reduction in the number of status offense petitions coming to Connecticut courts.<sup>524</sup> The state is also now considering removing all status offenses from judicial oversight—including runaways and youth charged with being beyond the control of their parents—and redirecting them to other systems whose staff are better equipped to manage these behaviors, including schools, child welfare, and behavioral health systems.<sup>525</sup>

For the same reasons that the Commission recommends the Council decriminalize status offenses, the Commission has also recommended decriminalizing specific other offenses when committed by youth (i.e., threats, disorderly conduct, resisting, failure to obey, vending without a license, offensive physical contact version of assault, possession of child pornography of themselves or their partner, and unlawful entry onto public property). Many of these offenses are overused in DC, again, with the effect of criminalizing normative adolescent behavior and trauma. Similarly, the Commission recommends adopting recommendation 4(d) in order to reduce, if not eliminate, the severity of criminal sanctions that attach to these offense types when committed by youth.

Finally, as the current DC Code is silent as to whether there is any minimum age of liability for juvenile delinquency proceedings, the Commission recommends the Council adopt recommendation 4(e). Recent brain science research on the capacity of young children,<sup>526</sup> and criminological research indicating that involvement of young children in the juvenile justice system increases future criminal behavior,<sup>527</sup> supports setting a minimum age of responsibility. A minimum age of 12 is consistent with standards of international law<sup>528</sup> and recent state reforms.<sup>529</sup> In fact, 22 states already specify a minimum age for criminal liability.<sup>530</sup>

These recommendations align with the Commission's goal of allowing children to be children, reducing the juvenile justice system's contact with the District's youth, and reinvesting resources saved as a result into non-punitive supports and community-based services.

5. **Recommendation: Strengthen current youth advisory board structure by creating an independent youth advisory board to MPD that has mechanisms for youth, families, and the community to lead reforms and to hold agencies and service providers accountable. The Youth Advisory Council should actively participate in the work outlined in Section VIII: 2(b) and 2(c) of this report.**

## Discussion

The current Washington, DC Youth Advisory Boards/Councils are largely symbolic in structure and should move toward a more substantive role in governance and policymaking. Youth councils are a relatively new phenomenon, with Houston's Youth Police Advisory Council, established in 1997, serving as a model for many other jurisdictions.<sup>531</sup> Washington, DC, like many other cities and counties, created numerous youth councils across the District, including MPD's Youth Advisory Council (YAC, formed in 2002) and the District of Columbia Juvenile Justice Advisory Group (JJAG, established as required by the Juvenile Justice and Delinquency Prevention Act of 1974). The JJAG is mandated to consist of 15 to 33 members, composed of directors of juvenile justice agencies, prosecutors, public defenders, mental health professionals, community leaders, and youth. The YAC, on the other hand, is an entirely youth-based committee, composed of students from DC schools, ages 14-18. The table below outlines the membership structure and key roles of these two groups.

The YAC initially formed with the objective "to create a program that would include the area youth in community policing and the problem-solving process."<sup>532</sup> The YAC continues to operate under this objective and offers youth educational opportunities as well as limited channels for civic participation. The JJAG, on the other hand, plays a more substantive role in policymaking and advising the Mayor's office, however youth represent a minority of its membership. Despite the existence of these two groups, a gap remains in youth leadership and youth voice in policymaking, advising, and oversight on policing in DC.

This recommendation to the Council addresses the need to further uplift and utilize the experiences, knowledge, and skillsets of DC youth in key decisions regarding policing practices, hiring, and police misconduct investigations. The Council should form a youth council as part of the Office of Police Complaints (hereafter referred to as the OPC Youth Council or OPCYC).<sup>533</sup> The OPC Youth Council should serve in a substantive oversight and advisory role, with decision-making power regarding hiring, funding, disciplinary issues, and policy within MPD. In addition, the OPCYC can field complaints regarding police misconduct and ensure that issues regarding police-youth interactions are properly addressed.<sup>534</sup> The framework for this committee is included in the table below:

	Membership	Roles, Responsibilities, & Activities
<b>DC Juvenile Justice Advisory Group</b> <sup>535</sup>	Currently consists of 23 members, six of whom are youth community members.	<ul style="list-style-type: none"> <li>☒ Spearheads the development of the District's three-year statewide plan.</li> <li>☒ Advises the Mayor and legislature on compliance with core requirements of the Juvenile Justice and Delinquency Prevention (JJDP) Act.</li> <li>☒ Obtains input from youth currently under the jurisdiction of the juvenile justice system.</li> <li>☒ Reviews and comments on juvenile justice grant proposals.</li> <li>☒ Assists in monitoring all juvenile detention and correction facilities and community-based programs to ensure compliance with the JJDP Act</li> </ul>
<b>MPD YAC</b> <sup>536</sup>	Students 14-18 years of age are selected through the schools and must obtain a consent agreement signed by a parent or legal guardian.	<p>MPD YAC meetings include:</p> <ul style="list-style-type: none"> <li>☒ Group-related activities, such as holding elections, planning group activities, problem-solving, or a combination thereof.</li> <li>☒ Social and educational events (trips).</li> <li>☒ Educational seminars.</li> <li>☒ Special guest speakers who interact with the youth to encourage positive change.</li> <li>☒ Basic career planning.</li> </ul>
<b>OPC Youth Council</b>	Composed of DC youth age 14-26. The committee should be composed and representative of those youth who most frequently interface with MPD officers.	<ul style="list-style-type: none"> <li>☒ Meet on a regular basis with the Chief of MPD and the Mayor.</li> <li>☒ Advise decision-makers regarding key policy decisions within MPD, including major conduct and hiring decisions.</li> <li>☒ Track and address complaints related to youth justice and youth interactions with MPD officers.</li> <li>☒ Participate on OPC committees where youth justice issues are discussed.</li> </ul>

The structure proposed here represents a step forward for youth representation in city governance. Numerous cities have created youth councils, yet most focus primarily on soliciting youth input on community issues, encouraging skill-building and civic participation, or addressing youth-related concerns.<sup>537</sup> The Commission encourages the Council to push further and offer youth a substantive platform for policymaking where the implications of policy are significant for youth.<sup>538</sup>

The Council should create an independent youth advisory board to MPD and ensure that this body has the capacity to lead reform and hold agencies and service providers responsible, especially as it pertains to policy and decision-

making that impacts youth. This youth advisory board should regularly interface with the Mayor, MPD Chief, and other relevant District leaders and stakeholders. In addition, as outlined in the above table, the youth board should have input regarding major decisions within MPD and pathways to address issues of conduct and policing practices that harm youth.

**6. Recommendation: MPD should mandate and provide interactive Recruit and annual Professional Development training on adolescent development and best practices for adolescent-appropriate policing. The training should incorporate the elements discussed in the three points and discussion below:**

**6 (a) Recommendation:** Incorporate this in the required training for all those in the Police Academy before graduation beginning FY22.

**6 (b) Recommendation:** Require all current officers to receive training by FY 2024, and annually thereafter. From that point on any officer who has not had this training or any other annual training must not be placed in the community, until such training is complete.

**6 (c) Recommendation:** Specify that funding should be distributed through a grant process that will allow multiple recipients to conduct these trainings (using the same design) for MPD, judges, prosecutors, educators, and the public. A ‘train the trainers’ model should be incorporated. Again, MPD would be required to attend the training.

### **Discussion**

Many of the recommendations presented here rely not only on legislative or policy-level changes, but on the support, adherence and buy-in of MPD officers and superiors. It is critical for MPD officers and other staff to receive regular training on adolescent development and adolescent-appropriate policing, to ensure that when police officers interact with DC youth, policies and practices align.<sup>539</sup>

In 2020, MPD held “two trainings [which] address adolescent brain development: Policing for Resilience and Interaction with Juveniles.”<sup>540</sup> These trainings were three and one-and-a-half hours long, respectively, and were mandated for all sworn officers. “Policing for Resilience” introduces officers to brain functioning and development. This training is led by Dr. Beverly Anderson, the Clinical Director and Administrator of the Metropolitan Police Employee Assistance Program.<sup>541</sup> The “Interaction with Juveniles” training focuses on trauma, adolescent brain development, and best practices when interacting with children. “Interaction with Juveniles” was led by MPD Lieutenant Paul Hrebenak, along with Detectives Sarah Buc and Bryan Mancuso.<sup>542</sup>

MPD is currently working with Georgetown Law Professor Kristin Henning to develop more robust training regarding police-youth interactions. However, currently there is no commitment, and no resources have been allocated, to ensure that this training becomes routine in MPD—that it is provided to every current officer and new recruit, now and in the future. MPD should commit to ensuring that this training continues to be developed and is provided in accordance with the requirements below. These requirements include:

- ☒ The training should be developed by individuals with expertise in police-youth interactions, drawing on the science of adolescent brain development and drawing on concrete examples of youth-police encounters in the District.

- ☒ The training should educate officers on how to decriminalize normal adolescent behaviors, reduce unnecessary police contact with youth, and employ strategies to de-escalate adolescent encounters without physical contact.
- ☒ The training should introduce officers to the psychological research on the traumatic effects of policing on youth, and particularly youth of color, paying special attention to how the use of force (e.g., police dogs, tasing, pepper spray, chokeholds, and other physical restraint techniques including handcuffing) is particularly harmful to healthy adolescent development.
- ☒ The training should help officers understand how racial bias and stereotype threat responses often distort perceptions of and responses to normal adolescent behaviors; and offer strategies to counter that bias.
- ☒ The training should ensure that officers will also understand the unique vulnerability and perceptions of coercion that youth of color experience in police-youth encounters such as interrogation and the request for a consensual search.
- ☒ Each MPD recruit should receive four hours of this training and each MPD officer should receive two hours of this training each year. The initial two-hour Professional Development Training module should be supplemented each year with updated information regarding the science of adolescent brain development; current needs of the District's youth; empirical changes in police-youth encounters during the previous year; discussion of current concerns regarding police-youth interactions; and any changes to relevant law and policy.
- ☒ Course evaluations shall be provided for every training, and training should be continually revised based on course evaluation feedback.

MPD officers who have not completed this or any other annual training by FY 2024 but who are scheduled to receive the required training within the coming six months may continue to work in the community, assuming they complete the required training as planned. In other words, the Department should not allow officers to rely on this exception indefinitely.

**7. Recommendation: The Council should amend DC Code 24-403.03(c) to require the court to consider the impact of individual and systemic racism on the defendant's prosecution and original sentencing.**

**7(a)** The Council should require all judges that review petitions filed pursuant to DC Code § 24-403.03 to receive regular training by community-based organizations led by Black and Indigenous people on the history and impact of individual and systemic racism in the criminal justice system.

**Discussion**

The impacts of individual and systemic racism are evident across the District, and affect individual and community health, wealth, and life chances. Racial disparity, as a reflection of individual and systemic racism, is especially pervasive in the criminal and juvenile legal systems. Even when decisions made by police, prosecutors, judges, parole boards, and probation officers are not rooted in individual bias, they are informed by systems which disproportionately punish poor people and people of color.<sup>543,544</sup> Broadly documented across the US, racial disparities are stark in DC, where Black people make up 86% of arrests yet are 47% of DC's population; Black DC residents are more likely to live below the poverty line; and 93% of those sentenced for felony offenses in the District's Superior Court in 2018 were Black.<sup>545,546,547</sup>

The District has long recognized that sentencing decisions must consider an individual's present circumstances, as well as relevant information from their past. This recognition is currently reflected in DC Code 24-403.03—Modification of an imposed term of imprisonment for violations of law committed before 18 years of age. Part (c) of the code makes clear that in approaching relevant sentencing decisions, the court must consider individual factors such as age, family and community circumstances at the time of the offense, and “any other information the court deems relevant to its decision.”<sup>548</sup>

The full text of subsection (c) reads as follows:

The court, in determining whether to reduce a term of imprisonment pursuant to subsection (a) of this section, shall consider:

- 1) The defendant's age at the time of the offense;
- 2) The history and characteristics of the defendant;
- 3) Whether the defendant has substantially complied with the rules of the institution to which he or she has been confined and whether the defendant has completed any educational, vocational, or other program, where available;
- 4) Any report or recommendation received from the United States Attorney;
- 5) Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;
- 6) Any statement, provided orally or in writing, provided pursuant to § 23-1904 or 18 U.S.C. § 3771 by a victim of the offense for which the defendant is imprisoned, or by a family member of the victim if the victim is deceased;
- 7) Any reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professionals;
- 8) The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;
- 9) The extent of the defendant's role in the offense and whether and to what extent an adult was involved in the offense;
- 10) The diminished culpability of juveniles as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing them to lengthy terms in prison, despite the brutality or cold-blooded nature of any particular crime; and
- 11) Any other information the court deems relevant to its decision.”<sup>549</sup>

In considering measures the District should take to protect young people from over-policing and criminalization, the Commission finds it of utmost importance for actors within the criminal justice system to recognize the pernicious effects of systemic and individual racism on criminal justice outcomes. The Commission therefore recommends for DC Code 24-403.03(c) to require the court to consider the impact of individual and systemic racism on the defendant's prosecution and original sentencing.

To ensure that judges who review petitions filed pursuant to DC Code § 24-403.03 are capable of evaluating how individual and systemic racism may have impacted a defendant's prosecution, training on the history and impact of individual and systemic racism in the criminal justice system should be provided.

## 8. **Recommendation: Increase transparency around youth arrest data.**

**8(a) Recommendation:** MPD should report crimes at “School-Based Events” in the published juvenile arrest data and disaggregate data by race, gender, age, and disability.

**8(b) Recommendation:** MPD should report school-related arrests (arrests at schools) in the published juvenile arrest data and disaggregate data by race, gender, age, and disability.

**8(c) Recommendation:** Require MPD and schools to track the kinds of weapons recovered (in reports on the count of weapons recovered at school) or the cause of a school’s call to MPD.

### Discussion

Parents, students, teachers, researchers, and residents of DC have a right to know what happens in the District’s public schools, how MPD operates, and the extent to which these two public systems intersect. Racial disparities in school-based policing are pervasive and the harmful effects of police contact for school-age children are significant. To ensure that policies, practices, and programs best serve DC students and families, it is crucial for data regarding policing in schools to be collected and made publicly available in a way that allows for disaggregation by race, gender, age, and disability status.<sup>550</sup>

Currently, MPD officers responding to school-related events include the statement “School-Based Event” at the beginning of their internal narrative and select the “School-Based Event” checkbox in the records management system. In addition, the US Department of Education collects and publishes the District’s data on school arrests in its biennial Civil Rights Data Collection.<sup>551</sup> However, neither of these is sufficient, alone or in tandem, to meet the needs of DC residents and hold DC’s public education and public safety institutions to a high standard. The data that MPD currently makes publicly available do not list which arrests were made in a school-based setting, and do not include demographic information—information critical to any evaluation of equity or justice. And the Civil Rights Data Collection’s reports are published infrequently, and without enough specificity in terms of the cause for a given arrest.

However, the data that *are* available point to the urgent need for reform. The latest Civil Rights Data Collection report (Survey Year: 2017) states that although 60% of students in DC Public Schools as of 2017 were Black, 91% of school-based referrals to law enforcement were of Black students, with Latinx students making up the other 9%.<sup>552</sup> In addition, 27% of students receiving referrals to law enforcement were students with disabilities. What is still unknown—at least to the public—is the cause of these arrests and the severity of the infraction that students who faced arrest were suspected of committing. It is clear that the status quo exacerbates inequities and further marginalizes the students who are likely those in greatest need of support from the DC Public School system. An important step toward remediation and building public trust is for MPD and DC Public Schools to commit to accountability.

Such accountability can begin to develop through thorough data collection practices and the timely publication of data in accessible formats. MPD should report all “School-Based Events” in the published juvenile arrest data (including contact with a young person that does not lead to arrest). MPD should also report when an arrest was made of a student coming from or going to a school-based event. This would hold MPD accountable to end the practice of arresting youth at school, with the exception of circumstances involving an active shooter. In addition, MPD should report, with specificity, the type of weapon involved in an incident if reporting a school-based event. Finally, the Council should review and revise Chapter B25 of the District’s Code to ensure greater specificity of what

constitutes a “weapon” in the context of a school. Leaving this categorization open to the broad interpretation of school administrators or law enforcement officers opens the possibility that students are unfairly penalized for possession of benign objects (e.g., water guns, toys, or any “tools or instruments which school administrators deem could be used as weapons”).<sup>553</sup>

The implementation of this recommendation will ensure greater transparency of MPD and DC Public School practices, which, in turn, will benefit the process of rebuilding trust between the DC community and its public institutions.

# Section VII: Guardians

## First: Building a Trusted, Community-Centered Police Department

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### OVERVIEW

One of the core recommendations of the President’s Task Force on 21st Century Policing in 2015 is that police departments abandon the “warrior” model of policing and adopt the traditional “guardian” model instead. Under the warrior model, officers operate out of fear, consistently focused on the dangers they face. They “fight crime” as though it’s a war, view the communities they police with suspicion, and treat people they believe might be breaking the law as opponents to be conquered.

By contrast, under the guardian model, officers operate out of empathy. They see themselves not as soldiers but as public servants, devoted to understanding, protecting, and collaborating with the communities they police. The Commission heard from one of the members of the President’s Task Force, former King County (Washington state) Sheriff Sue Rahr, who explained how the warrior model came to dominate policing over the past 30 years and how police departments can actualize the guardian model and transform themselves.

All the Commission’s recommendations regarding MPD street encounters promote the guardian model. That includes Section I’s recommendations to improve MPD interactions with individuals experiencing behavioral health or other crises, Section V’s many recommendations to revamp MPD stop, pursuit, search, arrest, use of force, and data collection practices, and Section VI’s recommendations to reform MPD’s interactions with youth.

Policies and practices that promote a harm reduction approach to policing are undoubtedly a critical component of the guardian model. But they are not the only component. The guardian model also hinges on developing and maintaining department-wide systems that embrace the model and the culture it fosters. These systems encompass:

- ☒ Officer education and training
- ☒ Recruitment, hiring, and staffing assignments
- ☒ Performance evaluations and promotions

- ☒ Officer wellness
- ☒ Internal auditing

The recommendations in this section focus on advancing a culture of guardian policing by improving policies and practices in each of these areas.

The Commission did not have the time, resources, or authority (e.g., subpoena power) to conduct a top-to-bottom review of MPD's systems. As a result, the recommendations below rely in large part on best practices. It may well be that a comprehensive review of MPD's systems would generate additional or more tailored recommendations for reform. For instance, the Commission did not examine MPD's field training program for new officers or the department's supervision regime. Both systems are self-evidently vital to shaping departmental culture. If field training and supervision do not reinforce guardian-oriented policies and practices, MPD will be a guardian-oriented agency on paper only.

## Recommendations

### I. DELIVERING EFFECTIVE, GUARDIAN-MODEL EDUCATION AND TRAINING

1. **Recommendation:** MPD should redouble its commitment to remaking its Academy and revamping its approach to officer education and training.

**1(a) Recommendation:** Through scenarios, simulations, role-playing and facilitated discussions, MPD must fully incorporate—in practice, not simply on paper—a collegiate education and training model focused on teaching officers, recruits, and cadets the skills they need to think critically, problem-solve effectively, and exercise their discretion appropriately.<sup>554</sup>

**1(b) Recommendation:** MPD must deliver Academy education and training to all recruits in a uniform manner, following the same course sequence for each recruit class, and should discontinue the practice of modifying course sequence for each recruit class depending on instructor availability.

**1(c) Recommendation:** The Council should allocate the funding required to ensure sufficient numbers of non-sworn Academy instructors and other staff to provide and support education and training to MPD officers and employees.

**1(d) Recommendation:** For Academy and in-service courses that lend themselves to community member participation, including but not limited to courses on impartial policing, cultural competency, behavioral health awareness, and community policing, the Council should allocate the funding required for MPD to integrate community-based organizations and community members as curriculum developers and training instructors and participants.

### Discussion

Education and training for recruits and officers can either cultivate or undermine guardian model policing. In its 2015 report, the President's Task Force on 21st Century Policing recommended certain methods for cultivating this model. Among them, Recommendation 5.1 emphasizes the need to change officer education and training to utilize more "adult-based learning and scenario-based training." This is borne out of the recognition that adult- and

scenario-based learning, or a “collegiate model” of learning, is more effective because it facilitates discussion and deliberation around how officers approach their jobs and requires officers to engage in critical thinking and problem-solving, exactly as they should on the street. The task force report also directs departments to establish partnerships with academic and other research partners in order to evaluate the effectiveness of their training programs and develop more evidence-based curricula.

The task force’s recommendations on scenario-based training draw on more than 20 years of research touting the benefits of a more interactive, hands-on approach to officer education, as distinguished from traditional lecture-based instruction.<sup>555</sup> The emphasis on problem-solving, critical thinking, and interactive learning has broad support as being more effective at communicating information on specific subjects and developing skills that officers can apply in practice to situations they may encounter on the street.<sup>556</sup>

Police agencies have used scenario-based, interactive training on use of force for a number of years. They are now incorporating de-escalation tactics into this mode of instruction, as well as training on stops, pat-downs, searches, and arrests. However, some subjects are often still taught using a traditional, static pedagogical format. This is in part driven by resource constraints rather than the preference of police leaders: a 2020 survey of over 600 law enforcement executives found that scenario-based training is the most preferred format for educating officers on all subjects.<sup>557</sup>

To its credit, MPD acknowledges the importance of collegiate-model, scenario-based education and training, and has made the shift toward utilizing it.<sup>558</sup> This shift, however, is not complete. Based on the Commission’s review of recent training materials, MPD still appears to rely on lecture-based, PowerPoint-driven instruction where scenario-based, problem-oriented facilitated discussion is both preferred and feasible, including on critical topics such as stops, pat-downs, searches, and transporting arrestees. To fully cultivate a guardian mindset, MPD should develop additional opportunities to use interactive learning methods that will teach officers how to think critically and problem-solve in situations they are likely to encounter in the field. These methods should beneficially prompt officers to share their own experiences as a means of advancing both their own learning and the learning of their colleagues.

[U]nder the guardian model, officers [operate out of empathy. They see themselves not as soldiers, but as public servants, devoted to understanding, protecting, and collaborating with the communities they police.

One significant flaw in MPD’s approach to Academy instruction is that recruits are not receiving uniform instruction. The Academy modifies the sequence of recruit training for each class depending on instructor availability. MPD asserts that resource constraints make uniform course sequencing impracticable. But other major city departments are able to manage this seamlessly—and it is critically important that MPD follow suit. In her discussion with the Commission, former Sheriff Sue Rahr, who has been a training academy commander, emphasized that intentional course sequencing is vital because policing concepts build on one another: “You have to build on concepts, starting with a simple concept and making it more complicated. I can’t imagine trying to build a skill set without going in sequence. That would be really challenging ... Like MPD, we typically would have five or six recruit classes at once on our campus, but the trainers would move from class to class so each class gets training in the right sequence.” Sheriff Rahr likewise emphasized that training has to be “taken out of silos as much as

possible because real life doesn't happen in silos. You always have to be able to react." In other words, Academy instruction needs to weave knowledge and skills together not only in an iterative way, concept by concept, but in a cohesive way, so that officers are able to call on diverse, interrelated concepts and skill sets when reacting to the real-world situations that require them. Because not every MPD recruit class is taught course material in the same sequence, MPD's current approach to recruit training is necessarily—and detrimentally—"siloed."

Finally, MPD must redouble its effort to collaborate with community-based experts and community members to help develop and deliver training on various subjects. The Council should allocate the funding required to compensate community groups and members for such work. MPD currently draws on community resources for certain training. For instance, it partners with the National Museum on African American History and Culture, the Holocaust Museum, the Department of Behavioral Health, and DC Safe. But most of the curricula and instruction are prepared and delivered by sworn personnel, with some assistance from civilian members of MPD. For certain topics, this is appropriate. But in other areas—including community policing; fair, impartial, and non-discriminatory policing; the history of race in the District; and interactions with youth, sexual assault victims, and individuals experiencing behavioral health and other crises—a more robust and consistent role for community partners is vital.

A 2017 report by the National Police Foundation discussed how community engagement in training, particularly recruit training, is important in shaping department culture: "Recruits' perspectives shift throughout their training, and their values are believed to move toward those held by more experienced officers (Mastrofski & Ritti, 1996). This may form the root of policing culture which drives the behavior of individual officers, [and] academy training may negatively impact recruits' attitudes toward important issues related to community policing."<sup>559</sup> The report goes on to discuss the positive experience of the New Haven Police Department, which has implemented a community-engagement training program that requires recruits to participate in direct community service.

To continue to help shape its culture, MPD should augment existing community partnerships to expand the role that community-based organizations and community members play in developing and delivering training to recruits and officers.

**2. Recommendation: MPD should cultivate police legitimacy, foster community trust, and promote officer wellness by developing and delivering subject-specific education and training that teaches officers to be guardians serving the District's diverse communities.**

**2(a) Recommendation:** The Council should make permanent Section 111(a) of Act 23-336, which refines the requirements for mandatory continuing education of MPD officers in DC Code 5-107.02.

**2(b) Recommendation:** MPD should provide all training recommended in other sections of this report, including training on behavioral health awareness, trauma recognition, and crisis intervention (Section II); the "most effective, least intrusive" policing principle and alternatives to arrest (Section V); de-escalation and use of force (Section V); First Amendment-protected activity (Section V); and interactions with youth (Section VI).

**2(c) Recommendation:** To fulfill its obligations under DC Code 5-107.02(b)(8), which requires training on the duty to report misconduct, MPD should reinforce every officer's duty to intervene to prevent fellow officers from engaging in misconduct, by following through on its existing plans to provide at least 10 hours of Academy training to recruits, and annual refresher in-service training to officers, on "active

bystandership” and peer intervention through ABLE (“Active Bystandership for Law Enforcement”). This training should include instruction on MPD’s policy proscribing retaliation against officers who report or intervene to prevent misconduct by their fellow officers.

**2(d) Recommendation:** To fulfill its obligations under DC Code 5-107.02(b)(2) & (6), which requires training on “linguistic and cultural competency” and the prevention of “biased-based policing, racism, and white supremacy,” and to build on its current National Museum of African American History and Culture program for recruits and officers, MPD—in collaboration with community partners—should provide officers a deeper, more nuanced and empathetic understanding of the District’s diverse communities. This should include at least four hours of additional annual in-service training on issues such as: structural racism, gentrification, urban renewal, and immigration in the District; the historical and current impact of policing and police practices on the District; the historical role of policing in advancing structural racism; and the role police can play in combating racism and white supremacy.

## Discussion

As Sheriff Rahr told the Commission, fostering a culture of guardian policing requires educating and training officers on guardian policing in a holistic way. It does not happen in one “siloes” course, even if repeated year after year. To the contrary, guardian policing concepts must run through and permeate all aspects of officer education and training—starting with recruit training and continuing with post-Academy field training, annual in-service training, and supervisor training. All the training recommendations in this report—not only in this section, but in the other sections—are interconnected in their effort to incorporate guardian policing concepts.

As to training on “linguistic and cultural competency” and the prevention of “biased-based policing, racism, and white supremacy,” required by DC Code 5-107.02(b)(2) & (6), as well as the other training recommended throughout this report (e.g., on trauma, the characteristics of youth, and behavioral health awareness), the Commission believes such training should be open to the community and include employees of other District agencies. The recommendations in this report are grounded in an understanding of equity and informed by how race, sexual orientation, gender identity and expression, age, histories of trauma, and other demographic factors often determine individual and community outcomes. The type of reform this report advocates is not possible without the support of not only the Council and MPD, but other civil servants, service providers, contractors, and others who make up the District’s public agencies. Ongoing, community-based training for these stakeholders is vital to ensure that equity exists not only in policy formulation but also in its day-to-day implementation. This type of training can benefit not only the individuals who make up the District’s agencies, but all District residents.

**3. Recommendation:** The Council should amend Section 111(b) of Act 23-336, which revives and reconstitutes the Police Officers Standards and Training (“POST”) Board, to redefine the duties of the Board, alter the appointments for new community members on the board, and ensure that the board has the resources it needs to meaningfully exercise its oversight responsibilities for MPD education and training programs.

**3(a) Recommendation:** The Council should expand the statutory duties of the POST Board to expressly include not only the development of minimum training standards and reporting on compliance with those standards, but also participation in the development of MPD training curricula and routine oversight of MPD training programs.

**3(b) Recommendation:** Of the five new community representatives on the board, the Council should appoint three and the Mayor two.

**3(c) Recommendation:** At least two of the new community representatives appointed by the Council and one of the community representatives appointed by the Mayor should be experts in education and training.

**3(d) Recommendation:** The Council should appropriate the funding necessary for the POST Board to have permanent staff to assist with administration, assessments, and reporting.

## Discussion

The Council created the District's POST Board in 2000 (DC Law 13-160) to establish minimum candidate qualifications and create minimum training requirements for MPD officers. In its original form, the POST Board consisted of 11 members, including the Chief of Police, the U.S. Attorney for the District of Columbia, two police representatives, and two community representatives appointed by the Mayor. Within two years of its creation, MPD and the POST Board expanded in-service training, created specialized training courses, and made other improvements to MPD's training standards and curricula. Since then, the POST Board has been mostly inactive, with its last meeting taking place in February 2017.

Among its duties, the POST Board is supposed to assess MPD's compliance with minimum training standards and recommend where MPD can make improvements (DC Code 5-107.04(m)(2)-(3)). The Commission could not find evidence that the POST Board has done this in recent years.

Under Subtitle G of Act 23-336, the Council reconstituted the POST Board. It added the Executive Director of the Office of Police Complaints as a member of the Board, and further expanded the board to include five new community representatives appointed by the Mayor. Among the new community representatives, expertise is required in each of the following areas: oversight of law enforcement, juvenile justice reform, criminal defense, gender-based violence or LGBTQ social services, policy or advocacy, and violence prevention or intervention.

The Commission supports the objectives of Subtitle G of Act 23-336. MPD's education and training function requires external input and oversight. Through a revived POST Board, community members and outside experts can help address deficits in MPD's current training standards and curricula. However, the Commission believes this emergency legislation should be amended in several ways.

*First*, the Council should expressly redefine the duties of the POST Board to include not only the development of minimum training standards and reporting on compliance with those standards, but also participation in the development of training curricula and more routine input into and oversight of MPD training programs. This is consistent with what the POST Board did when it was first established. The POST Board ought to fulfill the need for community/outside expert participation and oversight of MPD's training function. Presently, there is no oversight for that function, nor does that function currently benefit from any formal, routine, broad-based community/outside expert collaboration. The POST Board can and should fill these gaps.

*Second*, the appointment power for the five new community representatives should be diffused between the two elected branches of government—the Mayor and the Council—and should not rest solely with the Mayor, as the emergency legislation currently provides. This is consistent with, for example, the appointment structure for the reconstituted Use of Force Review Board under Subtitle D (Section 106) of Act 23-336, which gives the Council two community member appointments, and the Mayor three.

*Third*, because the POST Board's responsibility is to develop *training* standards and collaborate with MPD on *training* programs, it is imperative that at least three of the five new community representatives chosen by the Mayor and the Council have expertise in education and training. The Commission does not disagree about the importance of having community representatives possess the types of expertise required in the emergency legislation: "oversight of law enforcement, juvenile justice reform, criminal defense, gender-based violence or LGBTQ social services, policy or advocacy, and violence prevention or intervention." However, because one of the POST Board's primary functions should be to devise, assist, and oversee MPD education and training, the participation of individuals with experience in education and training is critical.

*Finally*, the Council must ensure that the POST Board is adequately funded. It will require at least one permanent staff member to assist with administration, assessments, and reporting.

## II. ELIMINATING STATUTORY MINIMUM NUMBER OF SWORN OFFICERS

4. **Recommendation:** The Council should repeal DC Code 5-105.05, which requires MPD to have a fixed minimum number of sworn personnel that is not based on any reasoned assessment of current public safety needs.

### Discussion

In 1956, prior to the District obtaining the right to self-governance, the United States Congress passed a law requiring at least 2,500 MPD officers, in addition to police surgeons and "police matrons."<sup>560</sup> In 1961, Congress increased this minimum number of MPD officers to 3,000, where it remains today.<sup>561</sup> During this time, the population of the District has decreased by approximately 50,000 people. In addition, the District now has its own Council and Mayor, tasked directly with addressing the public safety needs of District residents. It is inappropriate for a law passed 65 years ago by an entity that included no representatives elected by the people of the District to dictate the number of police officers the District must employ.

Even more importantly, a statutory requirement for a minimum number of police officers compromises the ability of District leadership to promote effective public safety. As discussed throughout this report, police are but one component of an effective public safety response. The nature and size of this policing component should be informed by evidence and current circumstances, not politically pre-ordained. Having a pre-set requirement for a certain number of officers potentially constrains the efforts of District leadership to allocate resources as needed to pursue a holistic, effective, and evidence-informed approach to public safety. It also undermines MPD's flexibility to hire civilian personnel consistent with this approach—for example, as Academy instructors or crime analysts. Further, requiring a minimum number of police officers but not, for example, a minimum number of schoolteachers or social workers perpetuates an approach to public safety that prioritizes policing and devalues the essential contributions of other disciplines that affect public safety.

Nor is there any reason to believe that the particular minimum of MPD officers required by statute was appropriate when set, much less now. The legislative history of both the 1956 and 1961 bills, first setting and then increasing a minimum number of officers, provides no rationale for those numbers other than "more." In 1956, Congress noted MPD had funding for 2,246 officers and increased funding to allow for 2,500; in 1961, Congress noted that MPD had 2,714 officers and urged MPD to "proceed with all possible dispatch toward meeting the goal of a 3,000-man police force as one of the steps to control the rapidly increasing number of serious crimes in the District of Columbia."<sup>562</sup> There was no discussion regarding how these numbers were devised, much less whether more police officers—as

opposed to, for example, more mental health workers or recreational programs—was the best way to address rising crime and promote public safety.

### III. RECRUITING, HIRING, AND PROMOTING QUALIFIED, DIVERSE, ETHICAL OFFICERS

5. **Recommendation:** The Council should ensure that the POST Board consistently and actively exercises its oversight responsibilities for MPD recruitment, hiring, and retention.

**5(a) Recommendation:** The Council should make permanent Section 111(b) of Act 23-336, which, in reviving and reconstituting the POST Board, obligates the POST Board to assess whether MPD’s recruitment efforts meet the needs of the District.

**5(b) Recommendation:** The Council should make permanent Section 111(c) of Act 23-336, which requires the POST Board to include in officer application criteria under DC Code 5-107.04(a) whether—if an applicant has prior service with another police agency—the applicant has a history of alleged or sustained misconduct.

**5(c) Recommendation:** The Council should amend DC Code 5-107.04 to (1) require the POST Board to establish and maintain a registry of current MPD and DCHA officers; (2) require the POST Board to establish a process and criteria for removing officers from the registry; and (3) empower the POST Board to remove officers from the registry, create a public database listing officers who are removed from the registry for cause or incompetence, and submit the names of officers removed from the registry to the International Association of Directors of Law Enforcement Standards and Training.

#### Discussion

In addition to its responsibilities for MPD training, the POST Board is supposed to establish and annually assess hiring criteria for MPD officers, as well as whether MPD’s recruitment efforts meet the needs of the District (DC Code 5-107.04(a) & (m)). The POST Board has not performed these duties in recent years. The emergency legislation seeks to revive this function. As explained in Recommendation 3 above, it adds the executive director of the Office of Police Complaints to the board, as well as five new community representatives with experience in “oversight of law enforcement, juvenile justice reform, criminal defense, gender-based violence or LGBTQ social services, policy or advocacy, and violence prevention or intervention.” The emergency legislation also adds to MPD officer application criteria the applicant’s history of alleged and sustained misconduct with any other law enforcement agency for which they have previously worked.

In Recommendation 3 above, the Commission supports the addition of new community representatives to the POST Board but recommends that at least three of them possess expertise in education and training so that the board can meaningfully fulfill its core education and training mission. Ideally, those members would also bring expertise relevant to the board’s mission regarding recruitment and hiring. But even if not, the other members of the board, including the two new community representatives as well as the executive director of the Office of Police Complaints, should do so.

The Commission fully supports requiring MPD officer applicants to disclose in their applications their disciplinary history at any other law enforcement agency where they previously worked. To promote a guardian culture—and to protect the District from incurring liability for rogue police conduct—MPD should not hire any officer with a

problematic history of misconduct, especially misconduct in encounters with civilians (e.g., use of excessive force, false arrest, false statements in reports).

The POST Board should also assume responsibility for establishing and maintaining an up-to-date registry of current MPD and DCHA officers, and should establish a process and criteria for removing officers from the registry. Unlike some states,<sup>563</sup> the District does not currently maintain a public registry. In the interests of transparency and accountability, it should.

Further, the POST Board should be empowered to decertify (i.e., revoke the license of) officers removed from the registry for serious misconduct or gross incompetence. Devising criteria for de-certification is complicated,<sup>564</sup> and the Commission does not endeavor to establish such criteria here. It should be left up to the POST Board, with Council authorization, to develop the criteria. It is important, however, that the District join the growing number of jurisdictions that revoke police officers' licenses for misconduct or incompetence, identify decertified officers on a published list, and put other jurisdictions on notice when they do so. Presently, neither MPD nor any agency overseeing MPD de-certifies rogue officers, publishes a list of them,<sup>565</sup> or puts other agencies on notice by informing the International Association of Directors of Law Enforcement Standards and Training, which maintains a list of officers whose licenses have been revoked.<sup>566</sup> To foster a guardian culture within the Department, MPD and the District must ensure that other jurisdictions' law enforcement agencies have full information about officers once employed by MPD. There are a number of existing de-certification laws for the Council and the POST Board to consult.<sup>567</sup>

- 6. Recommendation: The Council should make permanent Section 115 of Act 23-336, which prevents MPD from hiring officers who engaged in serious misconduct in another police department.**

#### **Discussion**

Subtitle K (Section 115) of Act 23-336 amends DC Code 5-107.01 to provide that an MPD officer applicant is ineligible for appointment if they were “previously determined by a law enforcement agency to have committed serious misconduct, as determined by the Chief by General Order,” were “previously terminated or forced to resign for disciplinary reasons from any commissioned or recruit or probationary position with a law enforcement agency,” or “previously resigned from a law enforcement agency to avoid potential, proposed, or pending adverse disciplinary action or termination.” For obvious reasons, the Commission supports this amendment to the Code. It would be difficult to promote a guardian culture if MPD were to hire officers with troubling disciplinary histories at other agencies. Further, hiring such officers would put the District at financial risk. If MPD hired an officer with a known history of serious misconduct, and that officer proceeded to violate a community member's rights during a law enforcement encounter, the District's potential liability would significantly increase.

- 7. Recommendation: MPD should fortify its ongoing efforts (1) to hire individuals who are from or have intimate familiarity with the District, including by expanding the Cadet Program, and who possess good interpersonal and communications skills; (2) to hire officers who would enhance MPD's diversity, including but not limited to women, racial and ethnic minorities, LGBTQ+ individuals, immigrants, individuals with disabilities, individuals who themselves have had experience with the police through the criminal legal system (including those convicted of minor offenses), and individuals fluent in non-English languages used in District communities; and (3) to keep from hiring individuals who endorse violence, racism, bigotry, religious insensitivity or misogyny, or who disparage any group or person based on their membership in a protected class.**

**To advance the broader, more comprehensive approach to public safety advocated in this report, the District also should create programs similar to the Cadet Program to educate and hire District residents to work in public safety and community-building professions beyond policing.**

## Discussion

Law enforcement agencies in major cities have long touted the benefits of a diverse workforce. For advocates of community policing, which MPD purports to embrace, diversifying police agencies has been a goal for over 30 years.<sup>568</sup> Diversity on its own has not necessarily been shown to reduce disparities in enforcement patterns, but it remains important as a signal to the community that an agency values employing officers with backgrounds and experiences as varied as those of the community members they serve. Having an experientially diverse police force may also facilitate a cultural shift toward a more robust guardian approach to policing.<sup>569</sup>

Along the same lines, there has been increased focus in recent years on the importance of officers having a strong connection with the communities they serve, whether through residency, former residency, or other intimate familiarity. Research on the most effective strategies for recruiting officers from a diverse array of communities (especially those underrepresented in law enforcement) is ongoing, but building on both past and existing efforts to hire and retrain diverse officers, particularly diverse officers who know the District and understand its diversity, will strengthen MPD's community relationships and enhance its legitimacy in the eyes of District residents. Clearly, with its participation in recent projects such as the Behavioral Insights Team and the What Works Cities Initiative, MPD understands the importance of further diversification, with a focus on recruits who identify with the District and can relate to and communicate effectively with all District residents. To achieve its objective of employing the most community-focused and diverse workforce possible, MPD should continue its experimentation and outreach.<sup>570</sup>

8. **Recommendation: The Council should establish a Public Advisory Board consisting of police organizational experts and community members, to assess, refine, and monitor MPD's performance evaluations, promotions, and specialty unit selection systems.**

**8(a) Recommendation:** The Public Advisory Board should develop criteria for performance evaluations, promotions, and specialty unit selections that prioritize the skills and qualities reflected in MPD's mission and value statement, including the proven ability to communicate effectively, resolve conflicts, serve with integrity, and build relationships with the District's diverse communities.

**8(b) Recommendation:** The Public Advisory Board should develop model job qualifications for the Chief of Police that include, among other things, a commitment to harm reduction and the guardian model of policing.

## Discussion

Fostering a guardian culture begins with prioritizing officer skills and performance that reflect guardian values. Accordingly, officer performance evaluations, promotions, and prized specialty unit assignments should rely on criteria that embrace guardian model policing. They should hinge not only on criteria such as test scores or the quality of arrests made (they should never hinge on quantity), but also on communication and problem-solving skills, report-writing proficiency, community relationships, effective de-escalation of tense encounters, and

appropriate diversion of youth, individuals experiencing behavioral health crises, individuals with developmental disabilities, and others to non-criminal outcomes.

The responsibility for developing such criteria and monitoring compliance should rest with an external Public Advisory Board, comprised of (1) outside police organizational experts who have experience helping to shape departmental culture through performance evaluations and promotions; and (2) community members who can convey, from experience, the skills they value in officers and supervisors. The outside experts will provide dispassionate, best practice-focused expertise. Community members will provide expertise informed by first-hand experience—and, in so doing, should help bolster MPD’s legitimacy, as MPD will come to value, in practice, what the community values in officers and supervisors.

The Public Advisory Board should begin by analyzing MPD’s current performance evaluations and promotions processes, focusing on how they align with both the expressed values and mission of MPD and with the broad goal of establishing a guardian-model agency. Recommendations for improving these processes will flow from this mission-driven assessment. The assessment should examine the existing performance evaluation process, including any self-appraisal component; the existing award/reward system, including all forms of formal and informal acknowledgment of individual or collective good work; the existing system for selecting personnel for all units other than uniformed patrol; and the existing promotions process, including all selection qualifications and criteria.

Ultimately, performance evaluations and promotions should be based on a holistic set of metrics that value building MPD’s legitimacy and maintaining community trust; as well as problem-solving and critical thinking skills that demonstrate a mastery of more than perfunctory police tasks. Criteria might include whether an officer dedicates additional time to non-enforcement problem-solving and cultivating relationships with the communities they patrol; whether community members and other civilian partners have expressed support or appreciation for the officer; and whether the officer has pursued non-punitive resolutions for less serious offenses. These are only a few examples of the many possibilities for performance evaluations and promotions criteria that would reinforce a departmental commitment to guardian model policing. Performance evaluations and promotions can serve to shift cultural norms in the same way as education and training.

The objective of retooling officer performance metrics to affirm a holistic set of community values is currently being promoted by the National Police Foundation and Vera Institute through the CompStat 360 program.<sup>571</sup> The proposed Public Advisory Board, working together with MPD leadership, could draw on that program and similar initiatives to re-examine MPD’s existing performance metrics and devise improvements.

#### IV. IMPROVING OFFICER WELLNESS

9. **Recommendation: Policing often induces trauma which, particularly if left unaddressed, can adversely affect officers and their families, and influence how officers treat community members. MPD should enhance its existing officer wellness program by ensuring broad officer awareness of available wellness services and by providing resources sufficient to meet the demand for these services.**

#### Discussion

The need for strong programming addressing officer mental health and wellness is widely accepted in both the profession and academia. Psychological and survey research has increasingly shown the unique ways in which stress, exhaustion, and trauma can affect officers’ mental and physical health, their relationships off the job, and

their performance on the job.<sup>572</sup> Because of the nature of their work, officers are at elevated risk of anxiety, depression, PTSD, high blood pressure, substance abuse, and suicidal thinking.<sup>573</sup> Making strong wellness programming available, and making sure that officers *know* it is available, is necessary to preserve officer health, retain experienced officers, and ensure high-quality officer performance consistent with MPD’s mission and values. Indeed, officers who are healthy and unburdened by undue stress are less likely to do harm in their encounters with community members and more likely to adhere to guardian-model tactics.

In December 2020, the U.S. Department of Justice announced a new initiative to encourage law enforcement agencies to share their experiences with implementing strong officer wellness programs.<sup>574</sup> The network DOJ is building complements 2017 congressional legislation directing more federal support to local health and wellness programs,<sup>575</sup> as well as the 2015 report of the President’s Task Force on 21st Century Policing, which stresses the importance of such programs.<sup>576</sup> It also follows from a 2019 DOJ report detailing the experiences of 11 large departments around the country.<sup>577</sup> That report documents a range of experiences and approaches to supporting officer mental health and addressing trauma. One universal finding is that “a strong commitment from the law enforcement agency at all levels” is necessary and that programs “may be successful *because* they have top-down and agency-wide support” (italics in original).

## V. ESTABLISHING A STRONG INTERNAL AUDIT FUNCTION

- 10. Recommendation:** MPD should expand its data quality division to establish a robust internal audit function that routinely assesses and publishes data regarding: MPD officer encounters with community members, including stops, pat-downs, warrantless searches, search warrant executions, warrantless arrests, arrest warrant executions, and uses of force. This work would encompass all of the data collection, analysis, and reporting recommendations in the other sections of this report.

### Discussion

Modern police agencies utilize an audit or performance standards unit to analyze and audit data and evidence on officer encounters with community members, including stops, pat-downs, searches, arrests, and uses of force, both overall and with particular groups of individuals, such as youth and individuals with behavioral health or developmental disabilities. These audit units routinely assess performance by officer, district, unit, and department-wide; identify trends; and when warranted, recommend corrective action, including policy revisions, additional officer training, remedial counseling, and disciplinary investigation of individual officers believed to have violated policy. Such self-assessment and self-correction are vital to ensuring department-wide compliance with law and policy, fortifying supervision, and optimizing departmental efficacy in addressing crime. In turn, they are vital to building community trust and enhancing a department’s legitimacy.

MPD does not have such a dedicated audit unit. Instead, it has a data quality division whose principal function is to collect and analyze crime statistics. As required by the NEAR Act, MPD has only begun to meaningfully collect data in areas as central to police work as stops, pat-downs, and searches. To genuinely become a 21st century law enforcement agency—and to reinforce a culture of guardian policing—MPD needs to establish and devote adequate resources to a full-fledged audit function. Establishing this function will not require expanding the number of sworn personnel, as most personnel can be non-sworn civilians with proficiency in data analytics. Nor will establishing this function require expanding MPD’s budget: the data quality division already has 19 full-time equivalent positions (one director, five sworn officers, and 13 non-sworn civilians).<sup>578</sup> What is required is a reallocation of existing

resources and a genuine commitment to self-assessment and self-correction as a means of building departmental legitimacy.

# Section VIII: Holding Police Accountable

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## OVERVIEW

The adage “the police can’t police themselves” is not new. In the aftermath of George Floyd’s death, the Major Cities Chiefs Association issued a statement proclaiming that “[a]ccountability must continue to be the cornerstone of tangible and substantive change and ethical policing.”<sup>579</sup> Yet accountability—rooted in the principle that in a democratic society, police must answer to the public<sup>580</sup>—has been elusive. Americans have been seeking effective ways to hold police accountable for generations. Perhaps like justice itself, accountability will always be a work in progress. Here in DC, there is more work to do.

There are a few key facets of police accountability that guided the Commission’s exploration of this crucial issue and informed our recommendations. As renowned police accountability expert Samuel Walker notes, accountability operates on two levels: holding entire law enforcement agencies accountable, and holding individual officers accountable for how they treat members of the public<sup>581</sup>—and the two are connected. In the case of a police shooting, for example, there must be an examination of both the officer’s actions and the agency’s training, tactical procedures, supervision, and other policies and practices that may have contributed to the incident.

There are also two modes of accountability: mechanisms within police departments, such as internal affairs units and disciplinary systems; and external oversight, including third-party monitors and civilian review boards.<sup>582</sup> The Commission examined both, to the extent possible given the information available to us. There is also the issue of transparency, which is essential to external oversight. If police policies and procedures, data, disciplinary processes and outcomes, and other records are secret, the public cannot hold the police accountable.

Like many cities, the District has an external entity to oversee police—the Police Complaints Board (PCB) and the Office of Police Complaints (OPC). Despite having two different names, the PCB and the OPC operate essentially as a single agency. The PCB serves as the board of directors of and oversees the OPC, which is responsible for mediating, investigating, and adjudicating public complaints lodged against MPD and District of Columbia Housing Authority Police Department (HAPD) officers.<sup>583</sup>

To be comprehensive and effective, external oversight must encompass both front- and back-end accountability. The Policing Project at the New York University (NYU) School of Law, which pioneered these terms, describes front-end accountability entities as those that “establish rules, regulations, and policies on the front end (before things go wrong), in a way that is transparent, evidence-based, and provides an opportunity for public input and debate.”<sup>584</sup> Back-end accountability focuses on holding officers or departments responsible after-the-fact, for something that has already gone wrong.<sup>585</sup>

While the PCB-OPC issues some policy recommendations largely based on their own investigations, the agency mainly provides back-end accountability, involving a subset of formal complaints that members of the public file. (The OPC does not investigate all complaints.) To provide more front-end accountability and independent back-end accountability, we recommend that the District: 1) create a deputy auditor for public safety; 2) transform the PCB into a commission with the authority to approve most MPD policies; and 3) expand the OPC's jurisdiction and authority. This new authority would give the OPC the right to investigate all in-custody deaths and serious uses of force, regardless of whether a complaint is filed, and the ability, in some situations, to make final disciplinary determinations.

The Commission was not able to review files for specific investigations conducted by the OPC or the MPD, nor did we have access to MPD disciplinary records, and therefore cannot comment on the quality and timeliness of these investigations, or the resulting determinations. Such a review is a critical task for a newly created deputy auditor for public safety.

Our inquiry did reveal weaknesses in both the OPC's and MPD's investigative process and MPD's disciplinary system—and we might have learned more had MPD's processes been more transparent. Our recommendations in this area are intended to improve the integrity of the administrative investigations, reduce investigative delays when a prosecutor is conducting a simultaneous criminal probe, and decrease the number of cases in which discipline cannot be imposed due to short statutory deadlines. With respect to discipline, the MPD should not limit its ability to appropriately punish past transgressors simply because MPD disciplinary records date back more than three or fewer years. Finally, freeing MPD from negotiating with the union over disciplinary issues will result in a process that upholds officers' due process rights while improving the odds that officers will be held accountable for wrongdoing, and through far less secretive procedures.

Sunlight is said to be the best disinfectant. Secret investigative and disciplinary processes leave the public in the dark—skeptical, doubting, and unable to hold the department or individual officers accountable. Other recommendations focus on making MPD's internal accountability mechanisms far more transparent. Specifically, MPD should, as other jurisdictions have done, make officers' disciplinary records public. It should release, subject to consent of the victim or victim's family, all BWC recordings of in-custody deaths, serious uses of force, and other incidents of significant public interest; and should make it easier for the public to obtain BWC recordings, redacted only to the extent necessary under the law. The Department must embrace a culture of transparency and accountability, which as the President's Task Force on 21st Century Policing underscored, is essential to building trust and legitimacy in the eyes of the public.<sup>586</sup>

## Recommendations

### 1. **Recommendation: The DC Council and the Mayor should create a deputy auditor for public safety within the Office of the District of Columbia Auditor.**

**1(a) Recommendation:** The law should specify that the deputy auditor for public safety's term be six years (DC auditor's term is six years), subject to reappointment; that the auditor shall appoint the deputy auditor for public safety, pursuant to a nationwide search; and that the auditor can only remove the deputy auditor for public safety for cause.

**1(b) Recommendation:** The law should specify that the deputy auditor for public safety possess subpoena authority, authority to compel District employees to provide statements and submit to interviews, direct access to all digital/electronic MPD, HAPD, District Department of Corrections (DOC), and Office of Police Complaints (OPC) records, access to all non-digital MPD, HAPD, DOC, and OPC records, and access to all records of other District agencies.<sup>587</sup> In addition, the law should require that the deputy auditor for public safety's budget be insulated from politics and sufficient for the deputy auditor for public safety to perform all its responsibilities.

**1(c) Recommendation:** The law should specify that the deputy auditor for public safety possess broad authority and jurisdiction, with respect to the MPD, HAPD, special police officers,<sup>588</sup> DOC, and the PCB-OPC,<sup>589</sup> including authority to review, analyze, and make findings regarding:

- ☒ System-wide patterns and practices.
- ☒ Any MPD, HAPD, and DOC policy, practice, or program, including constitutional policing, uses of force, use of canine, warrantless searches and seizures, use and execution of search warrants, hiring, training, promotions, internal investigations, and discipline.
- ☒ Any other policy, practice, or program that affects these law enforcement agencies' integrity, transparency, and relationship with District residents or of concern to the community.

**1(d) Recommendation:** The law should mandate that, at least bi-annually, the deputy auditor for public safety review, analyze, and make findings regarding:

- MPD's and OPC's handling of misconduct complaints and cases.
- Timeliness and quality of all MPD and OPC administrative investigations, particularly serious uses of force and other incidents that result in death.
- Disciplinary process.
- Disciplinary appeal process (grievances, arbitration, and DC Office of Employee Appeals).
- Civil judgments and settlements and MPD use and handling (if any) of these judgments and settlements.
- MPD use and handling (if any) of adverse findings (the USAO's or a judge's) regarding MPD officer credibility, official false statements, perjury, and any prosecutor list of officers who cannot be relied on as witnesses due to credibility issues (known as Brady or Lewis list).<sup>590</sup>

**1(d)(i) Recommendation:** The law should require that the deputy auditor for public safety and MPD work with the U.S. Attorney's Office for the District of Columbia (USAO) to develop a system for the USAO to advise the deputy auditor for public safety and MPD of adverse findings (the USAO's or a factfinder's) regarding an MPD officer's credibility; or regarding a determination that the officer made false official statements or committed perjury; and that the USAO provide to MPD and the deputy auditor for public safety its Brady or Lewis list, on a quarterly basis.

**1(e) Recommendation:** The law should require that the deputy auditor for public safety produce an annual report on its activities and operations, and reports following each investigation, review, study, or audit; and provide these reports to the Mayor, the Council, MPD, and the PCB-OPC; and publish the reports on the Office of the DC Auditor's website, with the respective agency's response.

The law should require that MPD and/or PCB-OPC be required to respond, in writing, to the deputy auditor for public safety reports' recommendations within 30 days, and that their responses must include: 1) a description of the corrective or other action the agency plans to take; 2) the basis for rejecting the

recommendation, in whole or in part; or 3) a request for an extension to provide substantive written responses.

**1(e)(i) Recommendation:** With the creation of the deputy auditor for public safety, the Council and the Mayor should shift from the PCB-OPC to the deputy auditor for public safety the responsibility for (as detailed in Code of DC § 5-1104(d-2)(1):<sup>591</sup> reviewing and reporting annually on MPD resolution of citizen complaints, the demographics of those involved in these complaints, and the proposed and actual discipline as a result of sustained citizen complaints; all MPD use of force incidents, serious use of force incidents,<sup>592</sup> and serious physical injury incidents;<sup>593</sup> and in-custody deaths.

**1(f) Recommendations:** The law should require that the deputy auditor for public safety engage in regular and sustained public outreach to inform the community and relevant law enforcement agencies about its mission, policies, and operations.

## Discussion

Modeled after agencies that exist in other cities throughout the United States,<sup>594</sup> the deputy auditor of policing is designed to improve MPD's policing practices and procedures and make these practices clear and understandable to the public, thereby enhancing the legitimacy of and public trust in MPD. Extending the deputy auditor of public safety's jurisdiction to the OPC should have the same effect: revealing the strengths and weaknesses of OPC's internal case processing, improving the quality and timeliness of OPC investigations, and increasing the public's confidence in OPC's work.

Although independent auditors, inspectors general, and monitors are the most common forms of external police oversight across the country,<sup>595</sup> DC currently lacks an agency empowered and dedicated to auditing MPD or the OPC. (For the sake of simplicity, this report uses the term "auditor.")

Auditors possess the capacity to provide both front-end<sup>596</sup> and back-end accountability.<sup>597</sup> On the front end, they audit complaint processes and police operations and make recommendations for changing training, policies, or procedures. On the back end, auditors retrospectively examine individual incidents, administrative investigations, and the disciplinary process, determining what went wrong or right, and making recommendations for change, as appropriate. In the view of Samuel Walker, emeritus professor of criminology and criminal justice at the University of Nebraska at Omaha, recommending policy changes "is potentially the most important accountability function that any public oversight agency can perform because it is directed toward organizational change that hopefully will prevent future misconduct."<sup>598</sup> Reports that auditors author make visible to the public details about police departments' operations. They provide the basis for informed public dialogue regarding controversial issues and police practices.<sup>599</sup>

Auditors can repeatedly revisit issues they examined in the past: their "continuous review of policies, training, and supervision" can prevent "a police department from slipping backward ... and keep it moving forward and adopting the newest ideas and best practices."<sup>600</sup> That the Council has, in recent years, tasked the PCB-OPC with producing an annual report on MPD's investigation of public complaints, use of force incidents, and in-custody deaths,<sup>601</sup> and with conducting an independent review of MPD's Narcotics and Specialized Investigations Division,<sup>602</sup> indicates that the Council is aware of the need for independent audits of MPD's operations.

In line with robust auditor models elsewhere, the enabling legislation should give the deputy auditor for public safety a broad scope of authority, rather than a narrow list of functions that could limit the deputy auditor for public safety's authority. In a 2020 survey, the NYU Law School Policing Project identified five auditors (Chicago, Los Angeles, New Orleans, New York, and Seattle) that possessed "broad authority to review any policy or practice that may be of interest to the public." The reports these inspectors general published "have in turn prompted significant policy change."<sup>603</sup> Broad authority allows an auditor to proactively investigate issues that it deems important and to respond to the concerns of officials from the Council, MPD, or other organizations.<sup>604</sup>

The Commission's recommendations regarding the deputy auditor for public safety's tenure, hiring, basis for removal (for cause only), subpoena authority, access to employees and records, and resources are intended to ensure that the deputy auditor possesses the power and resources needed to conduct mandatory and discretionary audits independently, while being insulated, to the extent possible, from politics.

Sunlight is said to be the best of disinfectants. Secret investigative and disciplinary processes leave the public in the dark—skeptical, doubting, and unable to hold the department or individual officers to account. ... Specifically, the MPD should, as other jurisdictions have done, make officers' disciplinary records public.

To promote independence, the deputy auditor for public safety should be housed within the Office of the DC Auditor, which reports directly to the Council, rather than under the auspices of the Mayor, who has direct oversight of the MPD Chief and the DC inspector general. In addition, the DC auditor has demonstrated an interest, in recent years, in assessing certain aspects of MPD. The auditor hired the Bromwich Group to assess MPD's compliance with select provisions of the 2001 memorandum of agreement with the U.S. Department of Justice, which ended in 2008. In 2016, the auditor published *The Durability of Police Reform: The Metropolitan Police Department and Use of Force 2008-2015*,<sup>605</sup> in 2017, the auditor provided an update of the implementation status of that report's recommendations.<sup>606</sup> The auditor also issued reports regarding MPD's monitoring of demonstrations and compliance with First Amendment protections,<sup>607</sup> and on September 15, 2020, announced that it again contracted with the Bromwich Group to review MPD's policies, practices, and operations with respect to certain officer-involved fatalities from 2018 to 2020.<sup>608</sup>

Consolidating the auditor's authority over agencies such as MPD, HAPD, and DOC within a single deputy auditor for public safety should, if the deputy auditor is given adequate resources, result in comprehensive external oversight of District law enforcement.

2. **Recommendation: The Council and Mayor should expand the authority of and rename the Police Complaints Board, which will continue to oversee the Office of Police Complaints, as the District of Columbia Police Commission ("DCPC").**

**2(a) Recommendation:** The law should require that DCPC review and approve, prior to issuance (except for emergency situations) MPD policies that are not purely administrative. For policies that broadly affect the community, the DCPC should engage the community and police during the development and drafting of new policies or policy revisions, including through use of formal forums and surveys.

**2(b) Recommendation:** The law should specify that DCPC have a role in setting, formulating, and/or approving MPD annual goals, and meeting quarterly with the MPD Chief to review MPD's progress in meeting these goals. MPD's achievement of these goals (emphasizing delivery of services rather than number of arrests or summonses) should be tied, at least in part, to the DCPC's assessment of MPD's success.

**2(c) Recommendation:** The law should specify that DCPC have a role in establishing the process for the Mayor's selection of a new MPD Chief, e.g., by developing a job description, and weighing in on minimum qualifications, whether the Mayor should engage a national search firm, and the DCPC's role in reviewing candidates.

**2(d) Recommendation:** The law should specify that, in making MPD more transparent, the DCPC must work with MPD to determine what information MPD should post to its website, subject to applicable laws (e.g., policies; detailed data on crime, arrests, citations, use of force, pedestrian and vehicle stops, and officer fatalities and injuries; layered budget information; and applicable union contracts), and that the DCPC may post such information on its website that MPD does not.

**2(e) Recommendation:** The law should specify that DCPC's composition consist of an odd number of members who reflect the diversity of the District; that members be compensated (not 100% volunteer); that individuals working for law enforcement agencies are not eligible; that members should include individuals below the age of 24; and that members should include individuals who have been directly impacted by the District's policing and/or incarceration system.

**2(e)(i) Recommendation:** In the near-term, the Council and the Mayor should make permanent the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020's exclusion from the Police Complaints Board of individuals employed by law enforcement agencies. Specifically:

- ☒ The new law should make clear that "no current affiliation with any law enforcement agency" means that no PCB member shall be currently employed by a law enforcement agency or law enforcement union.
- ☒ The new law should make clear that individuals formerly employed by law enforcement agencies are not excluded from serving on the PCB.

**2(e)(ii) Recommendation:** In the near-term, the Council and the Mayor should reconsider the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020's expansion of the Police Complaints Board from five to nine members, based solely on appointment of one member from each of the eight DC wards and one at-large member.

- ☒ While increasing the PCB membership from five to nine makes it more likely that the board reflects the diversity of the District, geographic diversity alone will not necessarily result in a board that reflects the District's diversity.

**2(f) Recommendation:** The Council and Mayor should hold full and robust public hearings on expanding the authority of and renaming the Police Complaints Board, or appoint a single-issue task force devoted to fleshing out the District of Columbia Police Commission's mandate, authority, composition, and its process for selecting members.

Prior to the emergency legislation, the Police Complaint Board consisted of five members appointed by the Mayor, subject to Council confirmation. One of the five members was required to be an active member of MPD. The PCB hires the OPC's executive director and oversees the OPC, serving as the OPC's board of directors.<sup>609</sup> Together with the OPC, the PCB makes recommendations to MPD on an array of issues, largely based on reports the Council has tasked it with preparing, as well as on OPC investigations.<sup>610</sup> PCB members also play a role in the OPC complaint review process. The OPC may dismiss a complaint with the concurrence of one PCB member, if they deem it lacks merit, if the complainant refuses to cooperate with the investigation, or if the complainant refuses to participate in good faith in the mediation process.<sup>611</sup>

MPD must embrace a culture of transparency and accountability, which as the President's Task Force on 21st Century Policing underscored, is essential to building trust and legitimacy in the eyes of the public.

To provide the public with a greater voice in how it's policed, the PCB, re-formulated as the DC Police Commission, would have the authority to review and approve MPD policies, prior to issuance, that are not purely administrative in nature; play a role in selecting the police chief; participate in the process of setting MPD performance goals; and help make MPD more transparent. In its new iteration, the DCPC would continue to oversee the Office of Police Complaints but would take on additional, front-end accountability responsibilities.

As the President's Task Force on 21st Century Policing concluded, the community should be involved in the process of developing and evaluating police department policies and procedures.<sup>612</sup> Police commissions that "review police department policies and practices to ensure they are consistent with community needs" exist in Detroit, Kansas City, Los Angeles, Milwaukee, Oakland, and San Francisco. Chicago is working to establish one.<sup>613</sup> The Commission, in fact, heard from Mecole Jordan-McBride, who helped lead the Grassroots Alliance for Police Accountability's (GAPA) effort in Chicago to create the Community Commission for Public Safety and Accountability (Ms. Jordan-McBride now works as the advocacy director at the NYU Law School Policing Project). In establishing independent front-end external oversight, she emphasized the importance of giving the community a formal voice in making police policies, selecting the police chief, and appointing external oversight agency heads. She also discussed the challenges of uniting the public behind a single plan and obtaining buy-in from city officials.<sup>614</sup>

With respect to the future DCPC's authority, mandate, composition, and membership selection process, we urge the Council to thoroughly consider different options through hearings or a single-issue task force. Some general principles are clear: to ensure the DCPC's independence, current law enforcement employees should not be eligible to serve as members; the DCPC's membership should be larger than the five-member PCB to better reflect the District's diversity (and not just geographic diversity); and its members should be paid, to reflect their experience, time, and commitment.<sup>615</sup>

**3. Recommendation: The Council and Mayor should expand the jurisdiction, authority, and resources of the Office of Police Complaints (OPC).**

**3(a) Recommendation:** The law should require that OPC conduct administrative investigations and make findings on all MPD "serious uses of force," (as currently defined in MPD General Order 901-07, Use of

Force) and in-custody deaths, regardless of whether an individual filed a complaint regarding the incident. At a minimum, the law should require that OPC conduct an independent investigation and reach dispositions on all MPD serious uses of force when an individual with “personal knowledge” files a complaint regarding the incident or under circumstances delineated in Recommendation 3(b).

**3(a)(i) Recommendation:** In cases that OPC investigates involving serious uses of force, (as currently defined in MPD General Order 901-07, Use of Force)<sup>616</sup> and in-custody deaths, MPD policy should ensure that the MPD Use of Force Board continues to review and analyze these incidents, but refrain from making final findings on whether officers complied with MPD policies; the OPC will make the final findings on whether officers complied with MPD policies.

**3(a)(ii) Recommendation:** If the District expands the OPC’s jurisdiction to include all MPD serious uses of force and in-custody deaths, regardless of whether an individual has filed a complaint regarding the incident, it should rename the Office of Police Complaints as the Office of Police Accountability.

**3(a)(iii) Recommendation:** The law should codify MPD “serious use of force” and “serious injury” (as currently defined in MPD General Order 901-07, Use of Force), to prevent a change in MPD policy from affecting OPC’s jurisdiction.

**3(b) Recommendation:** The law should specify that the OPC must investigate anonymous complaints and complaints that a non-witness files relating to unnecessary force and biased-based policing. In addition, the law should specify that the OPC may investigate anonymous complaints and complaints a non-witness files that fall within the OPC’s subject-matter jurisdiction, based upon the following factors: nature or severity of the alleged misconduct, the availability of evidence and/or witnesses, the ability to identify officers and civilians involved, and whether the OPC received other complaints regarding the incident from individuals with personal knowledge.

**3(c) Recommendation:** The Council and the Mayor should make permanent the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020’s extension of OPC’s jurisdiction to include “evidence of abuse” or “misuse of police powers,” including those that the complainant did not allege in the complaint but that the OPC discovers during its investigation.

- ☒ The law should not limit, through the use of examples, the allegations of “evidence of abuse” or “misuse of police powers” that OPC discovers during its investigation and upon which it can make a finding. The legislative language should be broad enough to allow the OPC to investigate all the potential misconduct it discovers through its investigation, unbound by the complainant’s specific allegations, such as the failure to turn on body-worn cameras, false reports, false statements, and destruction or concealment of evidence.
- ☒ The law should specify that when, during its investigation, the OPC discovers evidence of abuse or misuse of police powers that the complainant did not allege in the complaint, the OPC may include these allegations within the original case, rather than generating a new complaint or case, thereby increasing complaint or case numbers.

**3(d) Recommendation:** The Council and the Mayor should give the OPC jurisdiction to investigate special police officers as well as campus and university special police officers.

**3(e) Recommendation:** The Council and the Mayor should give the OPC the authority and ability to make informed disciplinary recommendations for cases in which complaint examiners sustain one or more allegations.

- ☒ In order to make informed disciplinary recommendations, based upon MPD’s Table of Offenses and Penalties Guide, OPC should have access to an officer’s training history, history of complaints and internal investigations (open and closed), and entire disciplinary history.
- ☒ If the MPD or HAPD Chief disagrees with OPC’s recommendation, the Chief must provide written explanation for the disagreement within 30 days.

**3(f) Recommendation:** For cases in which complaint examiners sustain one or more allegations and the MPD or HAPD Chief rejects the OPC’s disciplinary recommendation, and where the MPD or HAPD and the OPC cannot subsequently agree upon a disciplinary penalty, the Council and the Mayor should give a review panel of three complaint examiners the authority to determine the disciplinary penalty.

**3(g) Recommendation:** The Council and the Mayor should require the MPD Chief to respond to OPC policy recommendations within 30 days. MPD’s response must include: 1) a description of the corrective or other action MPD plans to take; 2) the basis for rejecting the recommendation, in whole or in part; or 3) a request for an extension to provide substantive written responses.

**3(h) Recommendation:** The Council and the Mayor should ensure that OPC has direct, electronic access to all MPD digital/electronic records, the authority to incorporate these records into its case files, and the authority to utilize these records—including BWC footage—in interviews with civilians and MPD employees, as OPC deems appropriate.

**3(i) Recommendation:** The Council and the Mayor should ensure that OPC’s budget supports the staff required to handle OPC’s increased responsibilities; provides for extensive and ongoing training with respect to investigating serious uses of force and in-custody deaths and recommending and reaching disciplinary determinations; and secures the OPC’s independence. To ensure this, the District should consider establishing a multi-year budget from a dedicated funding stream or statutorily linking OPC’s budget or headcount to MPD’s budget or headcount.

**3(j) Recommendation:** The OPC should develop and enhance its case management system to track and produce (not by hand), data including:

- Cases OPC closed by disposition type, e.g., number of cases OPC closes each year as adjudicated, mediated, policy training referral, rapid resolution referral, complaint withdrawn, dismissed on the merits, and dismissed due to the complainant’s failure to cooperate.
- Days it takes to close (from complaint date to closure date) cases by disposition type, and average and/or median number of days it takes to close cases by disposition type.
- Reasons why cases are closed as dismissed on the merits, by category, e.g., unfounded, exonerated, insufficient facts, etc.
- Track cases referred for criminal investigation, dates cases were referred, and dates of USAO decision/declination.

## Discussion

The OPC is currently responsible for processing, mediating, and investigating complaints, filed by an individual possessing personal knowledge of the alleged misconduct, against members of MPD and the HAPD involving harassment, unnecessary force, insulting or demeaning language, discriminatory treatment, retaliation for filing a complaint, and failure to wear identifying information or to identify oneself upon request.<sup>617</sup> The OPC closes cases in one of four ways: 1) referring the subject officer to complete appropriate policy training (known as policy training/rapid resolution referral); 2) mediation; 3) dismissal (on the merits and due to the complainant failing to cooperate); and 4) adjudication (through the use of complaint examiners).<sup>618</sup> One PCB member must concur before the OPC can dismiss a complaint.<sup>619</sup>

When the OPC determines there is reasonable cause to believe that a subject officer engaged in misconduct, it forwards the case to one of a pool of complaint examiners.<sup>620</sup> The PCB must approve complaint examiners that the executive director selects for the pool.<sup>621</sup> The complaint examiner adjudicates the case, through review of the investigative file and/or an evidentiary hearing. In a written decision, the complaint examiner makes findings of fact and determines whether the officer violated department policies. When complaint examiners sustain one or more allegations, the OPC forwards the case to MPD for discipline.<sup>622</sup> The MPD Chief issues a written decision memorializing the department's disciplinary decision and the reasons for it.

If the Chief determines that the complaint examiner's decision "clearly misapprehends the record" and "is not supported by substantial, reliable, and probative evidence in the record," the Chief will return the case to the OPC.<sup>623</sup> In these instances, a panel of three complaint examiners (not including the original complaint examiner) reviews the record and issues a written decision determining whether the original complaint examiner correctly sustained the allegation(s) at issue. If the final review panel affirms one or more sustained findings, the OPC returns the case to MPD for discipline. If the final review panel overturns the original complaint examiner's sustained finding(s), the OPC dismisses the case.<sup>624</sup> DC law does not provide the PCB-OPC with the authority to make disciplinary recommendations or to play a role in the disciplinary process.

### *OPC Jurisdiction and Authority*

According to a June 2020 Pew Research Center American Trends Panel poll, 69% of the public believe police do a "poor" or "fair" job of holding officers accountable when misconduct occurs; and Black people are much more likely than White people and Latinx people to hold this view (86% compared with 65% for both White and Latinx people).<sup>625</sup> The same survey found that 82% of Blacks, 81% of Latinx, and 71% of Whites—75% of the public overall—"strongly" or "somewhat" favor "giving civilian oversight boards power to investigate and discipline officers accused of inappropriate use of force or other misconduct."<sup>626</sup>

Given this widely held view that the police cannot police themselves, the OPC, as an agency independent from MPD, should have sufficient trained and qualified staff to investigate all in-custody deaths, and serious uses of force, regardless of whether a complaint has been filed regarding the incident. Broadening the types of cases for which the Office of Police Complaint is responsible and giving it a role in the disciplinary process should enhance public trust in the administrative investigation and discipline processes.

The Chicago Office of Police Accountability (COPA), a civilian investigative body independent of the Chicago Police Department, possesses the type of jurisdiction the Commission envisions for the OPC.<sup>627</sup> Like the OPC, COPA has jurisdiction to investigate certain types of public complaints, but it can also investigate incidents involving firearm

discharges, taser discharges resulting in death or serious bodily injury, and incidents involving the death or serious injury of an individual in police custody or that occurred as a result of police actions, regardless of whether a complaint has been filed.<sup>628</sup> In these cases, the Chicago Police Department may still conduct a review of the use of force incident to address policy, training, tactical, and equipment issues, but its Force Review Board “will not conduct a disciplinary review of any incident investigated by COPA,” since COPA is “exclusively responsible for recommending disciplinary action relating to the incident.”<sup>629</sup> This process is similar to the one Seattle has adopted. The Seattle Police Department’s (SPD) Force Investigation Team conducts investigations of serious uses of force, including shootings, and presents the case to and identifies issues for (without making recommendations to) the SPD’s Force Review Board. The SPD Force Review Board does not make final determinations on alleged policy violations that the Seattle Office of Police Accountability (OPA) is investigating, unless requested by the OPA director or board chair.<sup>630</sup>

Under current DC law, the OPC possesses the authority to investigate complaints of serious uses of force.<sup>631</sup> However, the Commission learned from OPC Executive Director Michael Tobin that OPC does not in fact conduct independent investigations of these complaints. Due to insufficient resources, OPC closes complaints involving serious uses of force as “referred to the MPD,” without opening an investigation, and monitors them through the OPC executive director’s role on MPD’s Use of Force Review Board.<sup>632</sup> It seems doubtful that when it created the PCB and OPC, the District intended for the PCB-OPC to refer the most serious complaints involving unnecessary force to MPD, without conducting an independent review.

When the District established the OPC, one of its goals was to “establish “an effective, efficient, and fair system of independent review of citizen complaints against police officers.”<sup>633</sup> Even if the Council and Mayor decide against expanding OPC’s jurisdiction to investigate certain incidents absent a complaint, it should, at a minimum, require the OPC to investigate all complaints involving serious uses of force over which it already has jurisdiction, and give it the resources it needs to do so.

The law also restricts the OPC’s jurisdiction to complaints filed by individuals with personal knowledge of the incident (alleged victim or eyewitness), or their legal representative. This restriction unnecessarily prevents the OPC from opening investigations of incidents regarding which it would otherwise have jurisdiction. Though the public may have greater faith in the independent investigations OPC conducts, it is the MPD that accepts all complaints, made in writing or orally (including those made anonymously), and ensures that “every complaint is investigated.”<sup>634</sup> We met with representatives from the American Civil Liberties Union of the District of Columbia (ACLU DC) and the Public Defender Service for the District of Columbia (PDS). Both organizations have persuasively argued<sup>635</sup> that OPC should have the ability to accept anonymous complaints and complaints from reporting non-witnesses, as other independent investigative bodies in New York, San Francisco, and Seattle have.<sup>636</sup> This would, as the ACLU-DC executive director testified before the Council, address concerns community members have raised that “fear of retaliation” by MPD officers “keeps them from filing complaints.”<sup>637</sup>

As part of the emergency legislation, the Council granted the OPC jurisdiction to investigate evidence of abuse or misuse of police powers that OPC uncovers during its complaint investigation. This makes sense, but that authority should be general, not limited to the examples cited in the emergency legislation; and it should permit the OPC to also investigate allegations like failure to turn on body-worn cameras, false reports, false statements, and destruction or concealment of evidence.<sup>638</sup>

Pursuant to municipal regulations, the District appoints and issues commissions to special police officers<sup>639</sup> and campus and university special police,<sup>640</sup> who wield certain police powers in connection with their employment. To

ensure that these special officers comply with District policies and the District revokes and terminates their commissions as necessary, OPC should possess the authority to investigate them.

In addition to expanding the OPC's jurisdiction in all these ways, the OPC should possess statutory authority to recommend discipline for officers proven to have engaged in misconduct and the ability to obtain relevant personnel records to make informed disciplinary recommendations. Where the OPC and MPD cannot agree on discipline, a panel of three OPC complaint examiners should be empowered to make the final disciplinary decision, which MPD would be required to impose. This is consistent with the policy recommendation the PCB-OPC itself issued in 2020.<sup>641</sup> As that recommendation describes, several public agencies in the United States, external to police departments, possess such authority.

In Chicago, for example, the COPA possesses the authority to review the "complaint history" of an officer and make a disciplinary recommendation to the Chicago Police Department (CPD) superintendent.<sup>642</sup> If the COPA and the CPD cannot agree on discipline, the Chicago Police Board, an agency independent of the CPD and the COPA, reviews the record and determines whether the superintendent's response does or does not "meet its burden of overcoming the COPA [c]hief [a]dministrator's disciplinary recommendation," and rules either in favor of COPA's disciplinary position or that of the superintendent.<sup>643</sup> The board posts the decision, including the officer's name, on the board's website.<sup>644</sup>

Here in DC, the PCB-OPC possesses the authority to make policy recommendations to MPD and the HAPD.<sup>645</sup> However, as the OPC's executive director, Michael Tobin, told the Commission, the law does not currently obligate either department to respond to PCB-OPC policy recommendations. We agree with Mr. Tobin that this should change.<sup>646</sup> Both departments should be required to respond to OPC's policy recommendations within 30 days, and describe the corrective actions they intend to take or their reasoning for rejecting the recommendations, in whole or in part.

### *OPC Resources*

To effectuate its new jurisdiction and authority, the OPC needs additional resources. Specifically, it needs unfettered access to all MPD digital and electronic records, new staff to assume these responsibilities, and time to hire and train staff. Chicago created COPA to replace its predecessor agency in October 2016; the COPA did not commence operations for 11 months.<sup>647</sup>

When he met with the Commission, OPC Executive Director Michael Tobin said that OPC needed direct access to all computerized MPD records. Although OPC has direct access to MPD body-worn camera (BWC) recordings, Mr. Tobin advised the Commission that the OPC does not play these BWC recordings during interviews with members of the public or officers because it is concerned that doing so will violate MPD policies on releasing BWC recordings.<sup>648</sup> OPC should have unfettered, direct access to all digital or electronic MPD records, possess the capacity to incorporate the records into OPC investigative files, and be able to utilize these records, such as reports and BWC recordings, during interviews OPC conducts. When an incident, in whole or in part, is captured on BWC recordings, investigators' follow-up inquiries should include playing the BWC recording and asking witnesses questions about what it depicts, confirming the identities and actions of individuals recorded, and probing the witness regarding the witness' actions at different points of the encounter.

Aside from greater access to MPD records, the District must increase the OPC's budget so that OPC can fulfill its responsibilities. Data the Commission compiled by hand, through examination of published complaint examiner

decisions, reveal delays in the investigations the OPC does conduct, indicative of chronic understaffing. During calendar years 2018, 2019, and 2020, the cases that OPC complaint examiners adjudicated—including all those where the agency sustained allegations of misconduct—took an average of 323, 389, and 384 days to complete, respectively, from the date the complaint was filed to the examiner’s decision.<sup>649</sup> As discussed above, the OPC’s director conceded the agency does not currently have the resources to investigate complaints of serious use of force, over which it already has jurisdiction. In order to ensure that independent investigative agencies’ budgets are adequate, cities such as Chicago, Miami, New York, Oakland, and San Francisco have linked the agencies’ staffing or budgets to those of the police departments.<sup>650</sup> The District should implement a similar budgeting mechanism for the OPC or consider establishing a multi-year OPC budget from a dedicated funding stream.

The Commission compiled by hand data regarding completion times for adjudicated cases because the OPC case management system could not produce it. Even a basic case tracking system should be able to generate data on case completion time, by type of case closure. The District should ensure that OPC’s resources include an upgrade of its case tracking system.

4. **Recommendation: The Council and the Mayor should make permanent the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020’s revision of DC Municipal Regulation § 24-3900.09 (“Metropolitan Police Department Body-worn Cameras”) that prohibits officers from reviewing their body-worn camera recordings or the body-worn camera recordings that have been shared with them to assist in initial report writing.**

**4(a) Recommendation:** The law should prohibit officers from viewing their body-worn camera footage, or the body-worn camera footage of other officers (except for the publicly available body-worn camera footage the Mayor releases) in all cases involving serious uses of force and in-custody deaths. MPD’s internal investigative unit or the OPC shall determine the circumstances under which the officers can view their body-worn camera footage or other officers’ body-worn camera footage in these cases. In cases involving potential criminal charges,<sup>651</sup> the MPD or the OPC shall make the determination to provide the subject officer with the opportunity to view their body-worn camera footage or other officers’ body-worn camera footage as delineated in Recommendation 5.

**4(b) Recommendation:** In cases other than those involving serious uses of force and in-custody deaths, the law should not allow officers to freely view other officers’ body-worn camera footage, except as prosecutors, OPC, and MPD internal investigators permit; and the law should require that MPD establish policies regarding when and under what circumstances officers may view their body-worn camera footage following completion of their initial report, and under what circumstances officers may write an addendum to their initial report.

**4(c) Recommendation:** The law should specify that MPD policies require, for any addendum reports officers write, that officers indicate whether they viewed body-worn camera footage prior to writing the addendum report, and specify what body-worn camera footage the officer viewed, including the officer’s own.

## Discussion

The question of whether officers should have the ability to review body-worn camera (BWC) footage prior to writing initial reports is a contentious one. While acknowledging that law enforcement chief executives hold differing

perspectives on the issue,<sup>652</sup> the Police Executive Research Forum (PERF) found that a majority favored permitting officers to review BWC footage. As an institution, PERF agreed, recommending that officers be permitted to review video footage prior to making a statement to produce more accurate reports and prevent officers' credibility from being unfairly undermined.<sup>653</sup>

The scientific literature does show that the accuracy of officer reports (as compared to known details about the incident and video footage documentation) improves after officers have the opportunity to view video recordings and can facilitate recall.<sup>654</sup> But research also shows that video recordings do not necessarily reflect what the officer saw, heard, or perceived,<sup>655</sup> and can bias the officer's memory, suppress what the officer originally recalled ("retrieval-induced forgetting"), and cause overreliance on video footage for recollection ("cognitive off-loading").<sup>656</sup> Viewing another officer's BWC footage, often recorded from a completely different perspective, presumably exacerbates these issues.

Because the Commission believes that initial police reports should be based on the officer's unbiased recollection of events, "[o]fficers, like other eyewitnesses," should not be permitted to view BWC footage prior to preparing their initial reports.<sup>657</sup> It is also important to establish when an officer can view their own BWC footage. Except in cases involving serious uses of force and in-custody deaths, MPD should establish procedures specifying when officers can view their own BWC footage and potentially file an addendum to their original report.<sup>658</sup> In cases involving serious uses of force and in-custody deaths, MPD and OPC investigators should decide exactly when officers can view BWC footage; this is the approach in Los Angeles, New York, Seattle and elsewhere.<sup>659</sup>

5. **Recommendation: In cases involving potential criminal charges against an officer, the Council and the Mayor should give OPC—and MPD should revise its rules to give itself—authority, as appropriate, to interview the subject officer(s) and/or complete administrative investigations, even if a prosecutorial decision is pending.**

**5(a) Recommendation:** In cases involving potential criminal charges against an officer, MPD should require its investigators to complete all possible investigative steps while potential criminal charges are being considered; once the prosecutor has issued a declination letter, MPD should then promptly interview subject officers.

**5(b) Recommendation:** In cases involving conduct that may be criminal in nature that the OPC is obligated to refer to the United States Attorney's office, the Council and Mayor should revise DC Code § 5-1109<sup>660</sup> and require that the OPC process the complaint and complete all possible investigative steps while potential criminal charges are being considered; once the prosecutor has issued a declination letter, the OPC should then promptly interview subject officers.

**5(c) Recommendation:** In cases involving potential criminal charges against an officer but where the prosecutor has not yet issued a written declination decision, MPD should in certain circumstances permit its investigators, with approval from the Chief and after consultation with the prosecutor, to complete its administrative investigation. The Council and the Mayor should revise DC Code § 5-1109 and permit OPC, in certain circumstances, with approval from the PCB and after consultation with the prosecutor, to complete the administrative investigation before the prosecutor issues a written declination. The relevant factors include the passage of time since the incident occurred, the seriousness of the allegations, and the public interest in prompt completion of the administrative investigation. In some cases, the administrative investigation may be completed without interviewing the subject officer(s) if evidence from other sources, including but not limited to body-worn camera footage, is sufficient for the investigator to make complete

and accurate findings without such interviews. Where subject officer interviews are necessary, MPD and OPC should seek a voluntary interview with the officer. If the officer does not voluntarily agree to be interviewed, MPD and OPC (under revised DC Code § 5-1109)—pursuant to Chief of Police or PCB approval, and after consultation with the relevant prosecutor—should allow their administrative investigators to compel the subject officer(s) to submit to an interview.

## Discussion

MPD and OPC administrative investigations focus on whether officers violated MPD policies. Such policy violations can result in discipline, up to and including termination. Sometimes, the actions at issue may be criminal, and the U.S. Attorney for the District of Columbia (USAO) conducts a criminal investigation of the same incident. For reasons discussed in detail below, MPD and OPC always wait to interview subject officers until prosecutors issue a letter, known as a declination letter, reflecting the prosecutor's decision to not file criminal charges. In a 2016 report, the DC auditor calculated that for 21 officer-involved shootings, which occurred from 2009 through 2014, it took the USAO an average of 599 days to issue a declination letter. The USAO's criminal investigation significantly delayed the completion of MPD's administrative investigations.<sup>661</sup>

While there is evidence that the USAO has been moving more quickly to decide whether or not to prosecute officers since the DC auditor's 2016 report,<sup>662</sup> both the police union and the OPC complained to the Commission about how long it takes the USAO to issue declination letters.<sup>663</sup> According to a report on standards and guidelines for internal affairs units, published by the U.S. Department of Justice, holding administrative investigations in abeyance during the pendency of a criminal investigation can cause lengthy delays that “undermine public trust and confidence that the agency is efficient and is taking speedy action to remedy police misconduct, thereby increasing public cynicism about law enforcement taking care of its own.”<sup>664</sup> The DOJ report advised a cautious approach, and indicated that some agencies proceed with the administrative investigation prior to the conclusion of the criminal one.<sup>665</sup> The District and MPD should alter their bright-line approach to these cases. When circumstances allow, MPD and the OPC should move forward with interviews of the subject officer(s) and in appropriate cases complete the administrative investigation without waiting for a USAO declination.

There is no legal prohibition, while a criminal investigation is pending, against conducting administrative disciplinary interviews of subject officers. To preserve an officer's Fifth Amendment rights, administrative investigators must advise the officer (if the officer is not making a voluntary statement) that statements the officer provides, or any evidence derived from these statements, cannot be used against the officer in any criminal proceeding. If the officer refuses to provide a statement following this grant of “limited immunity,” the officer can be fired.<sup>666</sup> Administrative investigators often delay interviewing subject officers and refrain from conferring limited immunity because prosecutors may have to prove, at a hearing, that they did not make direct or indirect use of the compelled statements.<sup>667</sup>

There is also no legal prohibition (or collective bargaining contractual provision), while a criminal investigation is pending, preventing MPD or OPC from completing administrative investigations without interviewing the subject officer(s). While interviewing the subject officer(s) will continue to be necessary in most cases, MPD and OPC should consider closing the administrative investigations without such interviews if the balance of relevant factors suggests that prompt completion of the administrative investigation outweighs the need for interviewing the subject officer(s), provided that complete and accurate findings can be made without such interviews.

In cases that are the subject of parallel criminal and administrative investigations, MPD needs to take great care to make sure its administrative investigations are not unduly delayed and hampered while criminal charges are being considered. The time frame by which MPD must initiate disciplinary action is tolled only for allegations of potential criminal conduct. The Department currently has only 90- or 180-business days to initiate disciplinary action for allegations that are not potentially criminal—allegations that are intertwined with the same witnesses, officers, documents, and facts as the potential criminal allegations.<sup>668</sup> This underscores the desirability of coordination between the two investigations and the need to avoid delays in the administrative investigation whenever possible.

MPD and the OPC should ensure that their investigative staffs are trained on the relevant constitutional issues raised by parallel criminal and administrative investigations. After careful assessment of evidence and conferral with prosecutors, MPD and OPC should have the flexibility, prior to a declination letter, to interview subject officers or to close administrative investigations without conducting subject officer interviews.

6. **Recommendation: The Council and the Mayor should modify the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020's revision of the Code of the DC § 5-1031, and extend the time frame for MPD's commencement of a corrective or adverse action from 90 business days to one year, from notice of the act or occurrence, for all cases.**

#### **Discussion**

The District should simplify the deadline for MPD's commencement of disciplinary action. The emergency legislation essentially established two deadlines by extending the time frame from 90 business days to 180 business days for cases involving serious uses of force and potential criminal conduct. This could lead to legal challenges based on case categorization and cases with allegations involving both serious uses of force and potential criminal conduct and other misconduct allegations. Counting by business days can also lead to computational errors. In his meeting with the Commission, DC Police Union Chairman Gregory Pemberton stated that MPD's failure to adhere to the 90-day time frame is one of the primary reasons why arbitrators overturn MPD disciplinary decisions.<sup>669</sup> The better practice is to establish a single deadline for all disciplinary cases of one year, or 365 days.<sup>670</sup>

The Commission's recommendation is not intended to encourage either MPD or OPC to take more time in completing administrative investigations. However, a single, longer deadline should diminish the number of cases in which MPD is thwarted from imposing discipline, and is reasonable compared to other jurisdictions. In New York, for example, the statute of limitations for commencing disciplinary action is 18 months from the date of occurrence, and in California and Maryland it is one year from the date of discovery of the allegation. All three of these jurisdictions make exceptions for criminal conduct.<sup>671</sup>

7. **Recommendation: The Council and the Mayor should make permanent the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020's revision of the Code of the DC § 1-617.08, which states that "[a]ll matters pertaining to the discipline of sworn law enforcement personnel shall be retained by management and not be negotiable."**

**7(a) Recommendation:** The Council and the Mayor should limit the authority of arbitrators to reverse MPD decisions to terminate or demote officers.

## Discussion

Council Chairperson Phil Mendelson introduced this amendment to the emergency legislation. The amendment removes discipline from the collective bargaining process. He reasoned that collective bargaining agreements “should not be used to shield employees from accountability, particularly those employees who have as much power as police officers.”<sup>672</sup> Municipal leaders and police chiefs share the same frustration when arbitrators reinstate officers whom departments fire, as District arbitrators did 45 percent of the time from 2006 to 2017.<sup>673</sup> Eliminating arbitration as an option for appealing MPD’s disciplinary decisions should make it easier to hold officers accountable for their misconduct.

There are two categories of MPD discipline: corrective actions and adverse actions. A corrective action is “unit-level discipline” resulting in dereliction reports, letters of prejudice, and official reprimands.<sup>674</sup> Of these three corrective actions, dereliction reports are the least serious and official reprimands the most serious.<sup>675</sup> An adverse action is “[d]epartment-level discipline and can include a fine, suspension, reduction in rank or pay, or removal from service.”<sup>676</sup> Adverse actions are the most serious type of disciplinary action MPD pursues. When the department determines to initiate an adverse action against an officer, it serves the officer with charges and specifications. Charges detail the specific regulation the officer is alleged to have violated; specifications detail the date and location of the alleged act or omission and a description of the alleged act or omission.<sup>677</sup>

Under the current collective bargaining agreement (CBA), officers can contest a corrective action, through the grievance process, to the Chief of Police. The officer cannot contest corrective actions through arbitration or further appeals.<sup>678</sup> However, the CBA permits non-probationary officers to challenge adverse actions involving any “fine, suspension, removal from service, or any reduction of rank or pay” through arbitration.<sup>679</sup> According to Police Union Chairman Pemberton, a union committee determines whether to take an officer’s case to arbitration.<sup>680</sup> Otherwise, the officer can appeal to the District of Columbia Office of Employee Appeals (OEA).<sup>681</sup>

In dismissing the union’s lawsuit challenging this provision of the emergency legislation, the U.S. District Court for the District of Columbia found that the provision was rationally connected to the goal of improving accountability and that MPD officers’ “unique accountability [to the public], scope of powers, and jurisdiction” justified treating them differently than other District employees.<sup>682</sup> Unencumbered by the need to negotiate, MPD would be obligated to establish disciplinary procedures that still provide non-probationary officers with due process, including the right to appeal disciplinary action.<sup>683</sup> Current negotiated disciplinary policies have resulted in arbitration decisions that MPD has criticized as lenient, and have limited the MPD’s ability to update disciplinary policies. Making this emergency legislation permanent will allow MPD to address these issues and improve its accountability system.

Arbitration procedures, such as those embodied in the CBA, “may frequently impede police accountability.”<sup>684</sup> Unless both the union and District agree, the arbitration is not open to the public. Both parties must agree on the selection of the arbitrator, and the arbitrator possesses the power to re-review the issue(s) submitted.<sup>685</sup> When both parties must agree on the arbitrator, it can “incentivize arbitrators to consistently compromise on punishment to increase their probability of being selected in future cases.”<sup>686</sup> Giving the arbitrator authority to re-review issues tends to divorce discipline from publicly accountable actors, insulating officers from democratic oversight.<sup>687</sup>

From 2006 to 2017, arbitrators in DC ruled that MPD had to reinstate 39 of 86 officers it fired,<sup>688</sup> including an officer convicted of a misdemeanor for sexually abusing a teenager in his car.<sup>689</sup> Like other chiefs around the country,<sup>690</sup> former MPD Chief Peter Newsham complained that arbitration decisions allowed “very bad police officers back onto our department.”<sup>691</sup> As former MPD Chief Charles Ramsey put it, “It’s demoralizing, but not just to the Chief.... It’s

demoralizing to the rank and file who really don't want to have those kinds of people in their ranks[.] It causes a tremendous amount of anxiety in the public. Our credibility is shot whenever these things happen.”<sup>692</sup>

While the new CBA under negotiation should reflect the District's determination to make this provision of the emergency legislation permanent, the current CBA remains in effect. It may also take time to resolve the union's legal challenges. The Council and the Mayor should therefore immediately limit the ability of arbitrators to overturn terminations and demotions. In these cases, the arbitrators' opinions would be advisory; they could not substitute their judgment for that of the Chief's. The officer, however, would still have the right, following the advisory decision and final MPD decision, to seek relief via the DC Public Employee Relations Board and/or the courts, as provided for in current law.

Although the District's arbitration process poses the most significant challenge to the accountability system, the CBA has also stymied MPD's efforts to revise its “Table of Offenses and Penalties.” The Table of Offenses and Penalties, which largely dates to 2017, is generally the basis upon which MPD makes disciplinary determinations, depending upon the offense and the officer's prior conduct.<sup>693</sup> While not explicitly mentioned in the CBA disciplinary provisions, any new or revised order or regulation, such as the Table of Offenses and Penalties, which “directly impacts” the “conditions of employment” of union members, must be negotiated.<sup>694</sup>

**8. Recommendation: MPD should revise its policies and stop purging disciplinary actions automatically from officers' personnel files after a set number of years. Specifically:**

**8(a) Recommendation:** MPD should stop purging adverse actions, the most serious level of discipline, from officers' personnel records automatically after three years. Adverse actions should remain permanently in the officers' official personnel file, element/unit folder, disciplinary record, and any other electronic or non-electronic record MPD maintains regarding the officers' employment. When imposing new discipline, MPD should consider (or be able to consider) adverse actions that MPD previously imposed against an officer throughout the course of the officer's employment.

**8(b) Recommendation:** MPD should stop purging corrective actions from officers' personnel records automatically after one, two, or three years. Purging, or removal of corrective actions from officers' official personnel file, element/unit folder, disciplinary record, and any other electronic or non-electronic record that MPD maintains regarding the officers' employment should be conditioned on the officers' staying out of trouble as follows:

- ☒ Dereliction report: remove from officer's official personnel file after one year provided the officer has no subsequent disciplinary violations.
- ☒ Letter of prejudice: remove from officer's official personnel file after two years provided the officer has no subsequent disciplinary violations, excluding dereliction reports.
- ☒ Official reprimands: remove from officer's official personnel file after three years provided the officer has no subsequent disciplinary violations, excluding dereliction reports and letters of prejudice.

**8(c) Recommendation:** MPD should clarify and make its policies consistent (General Order 201.19, Employee Personnel Records and General Order 120.21, Disciplinary Procedures and Processes) regarding “removal,” or “purging,” of corrective actions from an official personnel file, element/unit folder, disciplinary record, and any other electronic or non-electronic record MPD maintains regarding the officer's employment.

**8(d) Recommendation:** MPD should clarify its policy (General Order 120.21, Disciplinary Procedures and Processes) to make clear which previous disciplinary actions (corrective actions and adverse actions), based upon the date of issuance, the department considers when assessing the imposition of a new disciplinary action.

## Discussion

MPD, arbitrators, and the DC Office of Employee Appeals utilize what are known as the twelve *Douglas* factors in determining the appropriateness of a disciplinary penalty.<sup>695</sup> One of the factors to be considered is the employee's past disciplinary record. However, Marvin Haiman, executive director of MPD's Professional Development Bureau, explained that MPD does not consider any prior disciplinary action that is more than three years old, regardless of the seriousness of the prior misconduct, relevance to the current conduct under question, or officers' subsequent disciplinary violations.<sup>696</sup> MPD currently considers previous disciplinary actions for one to three years, depending on the seriousness of the discipline imposed.<sup>697</sup>

- ☒ Dereliction report: MPD considers for one year.
- ☒ Letter of prejudice: MPD considers for two years.
- ☒ Official reprimand: MPD considers for three years.
- ☒ Adverse action (resulting in fine, suspension, reduction in pay/rank, or termination): MPD considers for three years.

While MPD's policies describe retaining, removing, or purging disciplinary records from officers' official personnel files, Mr. Haiman assured the Commission that MPD retains records of all disciplinary actions resulting from sustained misconduct, in disciplinary files, "regardless of passage of time."<sup>698</sup>

Automatically removing prior disciplinary actions from officers' official personnel files without condition discourages officers from adhering to policies and makes a mockery of the principle that MPD takes into account previous discipline when determining appropriate discipline for a new offense. Pretending that an officer has no disciplinary record beyond a three-year time frame hinders the ability of MPD to impose progressively more severe discipline against—and fire if appropriate—known bad actors.<sup>699</sup> If MPD is evaluating what disciplinary penalty to impose against an officer who used an improper neck restraint, MPD could not consider discipline that the officer received for a similarly improper hold four years ago. The Department should retain adverse actions permanently in an officer's personnel file and give itself the option of considering all prior adverse actions when contemplating new disciplinary penalties.

While it is standard practice to remove relatively minor discipline from an officer's personnel file after a specified period, MPD should, like the New York City Police Department (NYPD), not do so unconditionally. In New York, corrective actions are called command disciplines. The NYPD seals two types of command discipline (A and B) only if the officer does not commit new disciplinary violations of at least equal seriousness.<sup>700</sup> The NYPD does not seal department-level discipline, the equivalent of MPD adverse actions.

Mr. Haiman had to clarify MPD's practices for the Commission because they are not clear from the Department's publicly available policies posted on MPD's website. Instead, the two relevant MPD general orders, "Disciplinary Procedures and Processes" and "Employee Personnel Records," provide the following confusing and conflicting information:

- ☒ **Disciplinary Procedures and Processes General Order<sup>701</sup>**
  - ☒ Adverse actions: no mention of how long MPD will consider them.
  - ☒ Corrective actions (dereliction reports, letters of prejudice, and official reprimands): should be retained in the officer's element, or unit personnel folder for three years.
  - ☒ Official reprimands: MPD will consider for three years.
  - ☒ Letters of prejudice: MPD will consider for two years.
  - ☒ Dereliction reports: no mention of how long MPD will consider them.
  
- ☒ **Employee Personnel Records General Order<sup>702</sup>**
  - ☒ Adverse actions: must be purged from the officer's official personnel file after three years, unless there is a litigation hold.
  - ☒ Official reprimands: must be purged from the officer's official personnel file after two years, unless there is a litigation hold.

The Department should make sure its policies in this regard reflect current practice, are internally consistent, and clarify where MPD stores and records disciplinary actions it removes from the official personnel file.

**9. Recommendation: The Council and the Mayor should revise the Freedom of Information Act (FOIA) law and explicitly provide the public with access to officers' personnel records pertaining to misconduct allegations and complaints. Specifically:**

**9(a) Recommendation:** The public should have access to records including, but not limited to: the officer's name, the existence and status of open allegations and complaints; closed allegations and complaints; administrative investigation outcomes (including not sustained outcomes); investigative closing reports and the information and evidence upon which the closing reports are based; charges and specifications; transcripts or recordings of any disciplinary hearings and/or appeals, including exhibits; the dispositions of any disciplinary proceedings and/or appeals, final agency and/or appeal dispositions; final agency disciplinary or non-disciplinary (e.g., training) determinations; and the final written opinions or memoranda supporting these dispositions and disciplinary determinations.

**9(b) Recommendation:** The agency responding to the FOIA request for complaint and misconduct records may redact from its response records pertaining to technical infractions involving an officer's minor rule violations solely related to the enforcement of administrative departmental rules that do not involve interactions with members of the public, minor rule violations that are not of public concern, and that are not otherwise connected to such officers' investigative, enforcement, training, supervision, or reporting responsibilities.

**9(c) Recommendation:** The agency responding to the FOIA request for complaint and misconduct records must redact from its response information involving any civilian witness' (including the complainant) and officer's medical histories (not including records obtained during the course of an agency's investigation of the officer's misconduct that are relevant to the investigation's disposition); the officer's and any civilian witness' home addresses, personal telephone numbers, personal cell phone numbers, personal email addresses, and social security number; and the officer's use of an employee assistance program, mental health, or substance abuse service.

**9(d) Recommendation:** The Council and the Mayor should require MPD and the OPC to create searchable public databases, available on MPD’s and OPC’s websites, regarding the administrative misconduct cases that each agency has processed, including the officer’s first and last name; badge or unique department identification number; district or assignment at time of incident; each misconduct complaint and/or investigation; allegations linked to each complaint and/or investigation; investigative outcome for each allegation; disciplinary or non-disciplinary action taken; and the status and outcome of any disciplinary appeal.

## Discussion

In 2015, WNYC News published a survey of all 50 states and the District of Columbia regarding public access to police disciplinary records. It found disciplinary records “public” in 12 states, “public in some situations” in 15, and “confidential” or “mostly unavailable” in 23. It categorized police disciplinary records in DC as “confidential” and “mostly unavailable.”<sup>703</sup> Since then, more states, including California<sup>704</sup> and New York,<sup>705</sup> have made some or all disciplinary records available to the public. The District should become one of the growing number of jurisdictions where police disciplinary records are public.

The President’s Task Force on 21st Century Policing articulated an overarching goal of modern policing: building trust and legitimacy. In its words, “[b]uilding trust and nurturing legitimacy on both side of the police/citizen divide is the foundational principle underlying the nature of relations between law enforcement agencies and the communities they serve.”<sup>706</sup> It recommended that “law enforcement agencies ... establish a culture of transparency and accountability in order to build public trust and legitimacy. This will help ensure decision making is understood and in accord with stated policy.”<sup>707</sup> Chris Magnus, the reform-minded chief of the Tucson Police Department, made it clear he understands these principles when he told the Commission:

Data transparency is critical.... You gotta push for open records, access to officers’ personnel files, internal affairs’ complaints, disciplinary information. All of that should be a public record. If it’s not, that’s worth fighting for. There’ll be chiefs to tell you, “it’s the end of the world.” Funny, I’ve now worked in three cities where everything is wide open, and the world has not stopped, let me promise you. You’re still able to do good policing. And I think you do better internally.<sup>708</sup>

Translating these principles into action requires that the District revise the FOIA and provide the public with explicit access to an officer’s disciplinary records. Currently, the District rejects FOIA requests for officers’ disciplinary records as an “unwarranted invasion of personal privacy,” and as “investigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints....”<sup>709</sup>

As in other policy areas, states that make disciplinary records available to the public have taken somewhat different approaches.<sup>710</sup> The District should adopt a broad, open approach as some other jurisdictions have. For example, in Florida the public has access to all complaints filed with an agency against an employee and all information obtained pursuant to the investigation, regardless of outcome, once the investigation is concluded with a finding either to proceed or not to proceed with a disciplinary action.<sup>711</sup> In Minnesota, the public has access to “the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action ... and the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body[.]”<sup>712</sup>

It's important that the public have access to information involving misconduct allegations that do not result in sustained findings. As Samuel Walker, an expert on police accountability expressed, "a pattern of unsustained complaints may be an indicator of an officer's performance problems."<sup>713</sup> They may also reveal deficiencies in how allegations of misconduct are investigated. Recent federal court rulings, based upon New York's decision to make officers' disciplinary records public, directly addressed public access to open and unsustained misconduct allegations.

In the summer of 2020, New York amended its freedom of information law and repealed the law that had concealed law enforcement personnel records from public view for 45 years.<sup>714</sup> In response, New York City announced its intent to publish, via New York City Police Department (NYPD) and Civilian Complaint Review Board (CCRB) public databases, certain types of disciplinary records and provide other records upon request, including the status of open cases and unsustained allegations.<sup>715</sup> While not challenging the right to release records involving sustained misconduct, law enforcement unions sued, alleging irreparable reputational harm, loss of privacy, and discriminatory treatment, among other arguments. The US District Court rejected the unions' position and specifically "reject[ed] the foundational argument that no one—law enforcement or civilian—can appreciate the distinctions between substantiated, unsubstantiated, exonerated, unfounded, and non-final claims."<sup>716</sup> The Second Circuit Court of Appeals affirmed the district court's decision.<sup>717</sup>

As the CCRB<sup>718</sup> and NYPD<sup>719</sup> have done in New York, MPD and OPC should create public databases, permitting the public to obtain information pertaining to officers' misconduct allegations. Prior to the unions' lawsuit in New York, the CCRB provided information from its databases to ProPublica and the New York Civil Liberties Union (NYCLU), both of which created interactive public databases.<sup>720</sup> The CCRB, NYPD, ProPublica, and the NYCLU databases are the kinds of databases that MPD and OPC should establish and update on a weekly basis.

Some misconduct allegations involve technical violations of MPD policy, such as uniform violations, loss of an ID card, or reporting late for duty. These technical violations do not involve interactions with the public, are not of public concern, and are not otherwise connected to an officer's investigative, enforcement, training, supervision, or reporting responsibilities. The New York law permits law enforcement agencies to redact these types of officer infractions from records when responding to freedom of information requests.<sup>721</sup> We agree and have incorporated the New York statutory provision into this recommendation.

- 10. Recommendation: MPD should post on its website a monthly calendar, to be updated weekly, of scheduled adverse hearings, trial board, and/or department hearing tribunal proceedings, detailing the subject officer's name, charges (specific regulations alleged to have been violated), specifications (date and location of the alleged act, or omission and a statement of the alleged act or omission), and the proposed disciplinary action. In addition, MPD should livestream these public hearings and post and maintain the recordings on its website for three years.**

## Discussion

In adverse action disciplinary cases where MPD proposes termination, three high-ranking members of the department serve as an internal hearing panel. Based on the evidence presented, this panel issues a final notice of proposed adverse action, which the officer can accept or appeal internally to the Chief.<sup>722</sup> These hearings are open to the public but not publicized.<sup>723</sup> Due to the COVID-19 pandemic, the hearings are now conducted via video.<sup>724</sup> (They are also audio recorded.)<sup>725</sup> To make the disciplinary process more transparent, MPD should post on its website the

schedule of adverse action hearings, including details concerning the charges and acts at issue, and livestream these public hearings. MPD should also post unredacted recordings (audio and/or video) on its website for a period of three years.

11. **Recommendation: The Office of Police Complaints should include on its website, in association with the complaint examiner decisions it makes public, the disciplinary determination for each officer against whom the complaint examiner sustained one or more allegations, and the status of any disciplinary appeal.**

#### Discussion

When the OPC investigative staff determines there was reasonable cause to believe that one or more officers violated MPD policies, a complaint examiner adjudicates the complaint and issues a written decision memorializing findings of fact and law.<sup>726</sup> In an effort to be transparent, the OPC publishes on its website every complaint examiner decision. For those cases in which the complaint examiner sustains one or more allegations of misconduct, the OPC should provide a link to the discipline that MPD imposed, perhaps by creating a new PDF file. The OPC does publish MPD disciplinary information in its annual report.<sup>727</sup> To make public access to this information more readily available, the public should be able to read the complaint examiner decision and disciplinary outcome in the same place on the website.

12. **Recommendation: Each year that MPD fails to provide, on an annual basis as required by the Code of the District of Columbia §5-1032, a report on misconduct and grievances filed by or against members of MPD, the Council should conduct an oversight hearing regarding MPD's internal investigative, grievance, and disciplinary systems, and require MPD's Chief to testify.**

#### Discussion

The law requires MPD to produce annually a report concerning misconduct and grievances filed by or against MPD employees. The Department is obligated to detail the number of individuals investigated and disciplined for misconduct, categorized by the nature of the misconduct allegations, the nature of misconduct allegations that are substantiated, and the discipline it imposed for substantiated allegations. In addition, the report must include the number of formal grievances individuals filed, including EEO complaints, categorized by the nature of the grievance filed and the nature of substantiated grievances.<sup>728</sup> The Commission had hoped to obtain this report to aid in its inquiry. Instead, we found that MPD has not prepared or delivered this report for at least the last several years. Failure to adhere to this law perpetuates the opaqueness of MPD's internal disciplinary system. When MPD fails to deliver this report as required, the Council should conduct an oversight hearing—requiring that MPD's Chief testify—to examine the Department's internal investigative, grievance, and disciplinary systems.

13. **Recommendation: MPD should install technology<sup>729</sup> to automatically activate body-worn cameras when an officer draws a firearm.**

The Office of Police Complaints' 2019 report on MPD's use of force denotes that officers pointed their firearms at "subjects" at least 316 times in 2019, an eight percent increase from 2018, when officers reported pointing their firearms at subjects 292 times.<sup>730</sup> During the first six months of 2019, MPD opened 318 investigations involving officers who allegedly failed to turn on their BWC; it sustained 256.<sup>731</sup> For the first six months of 2020 (the only months for which data are available), MPD opened 118 such investigations and sustained 76.<sup>732</sup> When an officer

withdraws a firearm from a holster to which a wireless sensor is attached, the sensor is triggered and alerts all BWC within a 30-foot range to begin recording.<sup>733</sup> Use of this technology will ensure that all officers' BWC are turned on, will increase the likelihood that officers' BWC capture an incident from multiple angles, and will improve the accuracy of reporting regarding the drawing and/or pointing of a firearm. Like police departments in Atlanta,<sup>734</sup> Charlotte-Mecklenburg,<sup>735</sup> and Dayton, Ohio<sup>736</sup> MPD should acquire and install this technology.

**14. Recommendation: The Council and the Mayor should modify and make permanent provisions in the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020 regarding public release of body-worn camera footage, as follows:**

**14(a) Recommendation:** The Mayor, notwithstanding any other law and the exceptions noted below in (14)(b)(i) and 14(b)(ii), shall within five business days after an officer-involved death or serious use of force,<sup>737</sup> release the names of all subject officers (the officers who committed the acts at issue) and BWC recordings of all officers (not just subject officers) that capture any part of the events leading up to the incident, during the officer-involved death or serious use of force, and after the incident; and should endeavor to release unredacted recordings, both audio and visual.

**14(b) Recommendation:** The Council and the Mayor should make explicit in the law that, prior to the Mayor releasing a BWC recording of a serious use of force, MPD shall make reasonable efforts to notify the individual against whom the officer(s) used force, or if the individual is a minor or unable to do so, the individual's next of kin.

**14(b)(i) Recommendation:** The Council and the Mayor should make permanent the emergency legislation's provision prohibiting the Mayor from releasing these body-worn camera recordings unless the following persons provide oral or written consent: 1) for a body-worn camera recording of an officer-involved death, the decedent's next of kin; 2) for a body-worn camera recording of a serious use of force, the individual against whom the officer(s) used force, or if the individual is a minor or unable to consent, the individual's next of kin. In the event of disagreement between multiple persons who must consent to the release of a BWC recording, the Mayor shall seek a resolution in the Superior Court for the District of Columbia, which shall order the release of the body-worn camera recording if it finds that the release is in the interests of justice.

**14(b)(ii) Recommendation:** The Council and the Mayor should require that MPD consult with an organization that possesses expertise in trauma and grief, adopt these best practices, and rely on a specialized unit, e.g., Victim Services Branch, Major Case Victims Unit, to liaise with the decedent's next of kin.

As specified in the emergency legislation, prior to the Mayor releasing BWC recordings of an officer-involved death, MPD's Victim Services Branch should: 1) notify the decedent's next of kin of the recording's pending release, including the date when it will be released; 2) offer the decedent's next of kin the opportunity to view the body-worn camera recording privately, in a non-law enforcement setting, in advance of its release; and 3) facilitate its viewing if the next of kin wishes to view the body-worn camera recording.

## Discussion

Police departments and legislatures have implemented a variety of policies governing public release of body-worn and in-car camera recordings, and are moving to become more rather than less transparent.<sup>738</sup> These policies differ in what has to be released, when, and for what types of incidents, but policymakers are realizing that for the public to trust the pronouncements of police and city officials, “the public must be able to ‘see for themselves’ what actually transpired.”<sup>739</sup> For example, within 48 hours of an officer-involved shooting, the Seattle Police Department releases the names of officers who discharged a firearm and within 72 hours generally releases both SPD-produced and private video that provides a general overview of what occurred.<sup>740</sup> In Los Angeles, on the other hand, the LAPD has 45 days, with limited exception, to publicly release BWC footage of “critical incidents,” which are redacted to protect subjects’ (not officers’) privacy. It must also release contextual information “based on the evidence available at the time of release.”<sup>741</sup>

The DC emergency legislation’s requirement that the Mayor release BWC footage of shootings and serious uses of force, subject to the consent of next of kin or the subject of the force, is consistent with current trends. A judge rejected the DC police union’s request for a temporary restraining order to block the District from effectuating these provisions, finding that there was “no evidence there would be ‘immediate or irreparable harm’ to an officer whose name or body camera footage is made public.”<sup>742</sup> Although the release of video recordings will allow witnesses to view them while criminal and administrative cases are under investigation,<sup>743</sup> the value of releasing the recordings outweighs the costs. With a few modifications, the Commission supports these emergency legislation provisions, because “withholding BWC recordings from public scrutiny only exacerbates suspicions and thereby inflames public *distrust* currently besetting the nation’s law enforcement community.”<sup>744</sup>

Permanent legislation should require the Mayor to release the BWC recordings of any officer that captured all or part of the events leading up to the incident, during the incident, and after the incident, which should include any search for a weapon. The BWC recordings of witness officers help “provide the public with the clearest picture of what took place,”<sup>745</sup> and often show a broader perspective of the incident and the subject officer’s actions. The Seattle Police Department releases the BWC recordings of witness officers and presents officers’ recordings serially, not in a confusing multi-video collage as MPD has.<sup>746</sup> It is illogical to restrict the recordings released to only those of the officer(s) who committed acts at issue.

The Mayor should also release BWC recordings with as few redactions as possible. As Thomas M. Susman, President of the DC Open Government Coalition testified before the Council’s Committee on the Judiciary and Public Safety last October, there is no reason to “shroud” the faces and identities of MPD officers who are “publicly performing their duties.”<sup>747</sup> As that same committee noted in a 2015 report on the Body-Worn Camera Program Amendment Act of 2015, since “there is little expectation of privacy in public space—anyone could witness an incident with the naked eye—such recordings should be public in their unredacted form unless otherwise required by law.”<sup>748</sup> When the LAPD releases video, it does not conceal the identities of officers or of the subject of the use of force.<sup>749</sup> The Mayor’s and MPD’s mindset regarding release of BWC recordings should be “how much can we release,” within reason, rather than “how little can we release.”

A genuine debate exists as to whether the deceased’s next of kin or individuals against whom officers used serious force should have the power to prevent the District from releasing BWC recordings. The recordings are, after all, public records and releasing them, as detailed in this report, is critical to public trust. In these sensitive cases, however, an individual subjected to serious use of force, or a deceased’s next of kin, should have some say in the matter. Such a policy is not without analogous precedent. Colorado now requires release of unredacted video and

audio recordings for all incidents in which there is a complaint of misconduct. But when unredacted footage raises substantial privacy concerns, Colorado law enforcement agencies cannot release the unredacted footage without the written authorization of the next of kin or victim. If redaction or blurring is insufficient to protect individuals' substantial privacy interest, the law enforcement agency shall, upon request, provide the recordings to the next of kin or victim, and will not release the recordings unless the next of kin or victim waives the privacy interest.<sup>750</sup>

What is not debatable: prior to releasing BWC recordings, MPD must notify the individual against whom officers used serious force or the deceased's next of kin, and a specialized unit trained in grief and trauma should liaise with the deceased's family. At one of the Commission's public forums, Kenithia Alston, mother of Marquese Alston, whom MPD officers shot and killed on June 12, 2018, decried the lack of information initially provided to her by MPD and her struggle to obtain access to the BWC recordings. After passage of the emergency legislation, Ms. Alston said that MPD left her a voice message only 90 minutes ahead of the District's release of redacted and incomplete BWC recordings. She complained that MPD did not give her an opportunity to oppose release of the recordings and that she still had not seen unredacted BWC footage.<sup>751</sup> Regardless of the circumstances of the officer-involved death, MPD must provide proper notice and deploy trained staff to communicate appropriately with the deceased's family.

15. **Recommendation:** The Council and the Mayor should make permanent the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020's requirement that MPD provide, within five days, unredacted (both audio and visual) copies of all body-worn camera recordings that the chairperson of the Council committee, with jurisdiction over MPD, requests, and which the chairperson shall not publicly disclose.

15(a) **Recommendation:** If the chairperson of the Council committee with jurisdiction over MPD, who has access to unredacted body-worn camera recordings, determines that the Mayor has released BWC recordings of an officer-involved death, a serious use of force, or a matter of significant public interest,<sup>752</sup> and that the redactions the Mayor has made undermine the public interest in understanding what occurred, the chairperson may seek a resolution in the Superior Court for the District of Columbia, ordering the release of unredacted BWC recordings, or BWC recordings with fewer redactions, if it finds that such release is in the interests of justice.

15(b) **Recommendation:** If the chairperson of the Council committee with jurisdiction over MPD, who has access to unredacted body-worn camera recordings, determines that in matters of significant public interest the Mayor should release BWC recordings and the Mayor decides against releasing them, the chairperson may seek a resolution in the Superior Court for the District of Columbia, which shall order the release of BWC recordings if it finds that such release is in the interests of justice.

## Discussion

One of the Council's responsibilities is to conduct oversight of MPD. It therefore makes sense that MPD provide the chairperson of the committee with jurisdiction over MPD unredacted copies of BWC recordings, within five days, upon request. Under the emergency legislation, the chairperson (of the Committee on the Judiciary and Public Safety) and the Council are not permitted to publicly disclose these recordings.

The ACLU-DC, the DC Open Government Coalition, and community members such as Kenithia Alston have critiqued what they describe as MPD's over-redaction of video, overuse of front- and back-end edits, and the Mayor's failure to

use her discretion to release BWC recordings in matters of significant public interest.<sup>753</sup> The ACLU-DC suggested that the District utilize an “independent arbiter ... to determine when body-worn camera footage is of ‘significant public interest.’”<sup>754</sup> We agree. The District should use an independent arbiter to resolve these disputes in cases involving officer-involved deaths, serious uses of force, and matters of significant public interest.

The emergency legislation already establishes a mechanism for an independent arbiter. When there is a disagreement between individuals who must consent to release—the next of kin—the statute stipulates that “the [m]ayor shall seek a resolution in the Superior Court for the District of Columbia, ... which shall order the release of the BWC recording if it finds that the release is in the interests of justice.”<sup>755</sup> Since the chairperson has access to unredacted recordings, we propose that when the chairperson determines that MPD’s redactions or edits undermine the public interest, the chairperson may seek a resolution in the Superior Court for the District of Columbia. Similarly, when the chairperson determines that the Mayor should release recordings of matters of significant public interest but has not, the chairperson may also seek a resolution in court.

**16. Recommendation: The Council and the Mayor should improve public access to body-worn camera (BWC) footage through the Freedom of Information Act.**

**16(a) Recommendation:** The Council and the Mayor should narrow the personal privacy exception to FOIA, with respect to body-worn camera recordings that depict officers, storefronts, outward facing residences, and third parties; MPD invokes this exception to redact body-worn camera recordings, including images of officers’ faces and identifying information, though the officers have no expectation of privacy while performing their duties in public spaces.

**16(b) Recommendation:** The Council and the Mayor should require that MPD publish the redaction fees it charges members of the public who request (unredacted) BWC recordings under FOIA; the fee schedule should include redaction costs per hour and per individual or per object. At a minimum, MPD should be required to use the least costly commercially available method of redacting body-worn camera recordings, and to utilize in-house resources, to the extent possible, to effectuate any redactions the law mandates.

## **Discussion**

When representatives of the DC Open Government Coalition met with us, they emphasized the need for the District to clarify what kinds of images depicted in BWC recordings constitute an “unwarranted invasion of personal privacy,” thus exempting these images from FOIA disclosure.<sup>756</sup> The FOIA statute specifically exempts from FOIA disclosure those BWC recordings inside a personal residence and related to domestic violence, stalking, or sexual assault.<sup>757</sup> However, as the director of the District of Columbia’s Office of Open Government, Niquelle Allen, testified, MPD has released BWC recordings pursuant to FOIA requests that “have been redacted beyond recognition—that is, videos with all faces, all voices, all street names, badge numbers, every car tag in sight, and the like redacted. ... If the BWC ... footage that is released is unrecognizable it has no value.”<sup>758</sup> Providing more statutory guidance to MPD would diminish public frustration with the FOIA process and help make MPD more transparent. Even if FOIA exemptions technically apply, Ms. Allen suggested that the District articulate a test, guiding MPD to release unredacted video when the public interest in release outweighs any personal privacy considerations.<sup>759</sup>

Representatives from the DC Open Government Coalition drew our attention to another problem with MPD’s responses to FOIA requests for body-worn camera recordings: prohibitive costs.<sup>760</sup> In his testimony before the

Council, Mr. Susman, the coalition's president, described how MPD hires private contractors to perform redactions and charges requestors \$23 for each minute of the contractors' work.<sup>761</sup> Charges in response to past FOIA requests "run from thousands to millions of dollars."<sup>762</sup>

MPD's policy on Freedom of Information Act requests dates to November 16, 2010,<sup>763</sup> prior to the implementation of body-worn cameras. The fee schedule incorporated into this policy does not, therefore, contain any information concerning BWC recording redaction fees. MPD's website does not include this information either. The Department should update its FOIA fee schedule policies to include data concerning redaction costs.

Exorbitant redaction fees stem in part from over-redaction.<sup>764</sup> They also appear to result from MPD's reliance on expensive outside contractors. The Department should employ its own staff and acquire the equipment it needs to perform redactions internally, as Niquelle Allen recommended. In addition to reducing costs, this should also reduce the time it takes to turn over the recordings.<sup>765</sup>

- 17. Recommendation: The Council should make permanent Section 113 of Act 23-336, which provides a right to a jury trial when a person is accused of assault on a police officer, and restore the right to a jury trial in all criminal cases.**

### **Discussion**

The NEAR Act intended to provide a right to a jury in cases involving an assault on a police officer (APO) by making this crime punishable by six months in jail.<sup>766</sup> Following the NEAR Act's passage, however, the Office of the U.S. Attorney began charging people accused of this offense with simple assault instead, preventing them from having a jury. The DC Court of Appeals upheld the U.S. Attorney's charging decisions, placing the onus on Council to fix the statute.<sup>767</sup>

With the NEAR Act, Council intended to make prosecutors examine APO cases more closely, as well as take the court out of the uncomfortable position of having to make specific credibility findings that would affect an officer's career.<sup>768</sup> Furthermore, despite upholding the U.S. Attorney's charging decisions in the case cited above, the Court of Appeals has also implored the District to restore the right to a jury trial more generally, with Chief Judge Washington stating in 2018:

The Council could reconsider its decision to value judicial economy above the right to a jury trial. Restoring the right to a jury trial in misdemeanor cases could have the salutary effect of elevating the public's trust and confidence that the government is more concerned with courts protecting individual rights and freedoms than in ensuring that courts are as efficient as possible in bringing defendants to trial. This may be an important message to send at this time because many communities, especially communities of color, are openly questioning whether courts are truly independent or are merely the end game in the exercise of police powers by the state. Those perceptions are fueled not only by reports that police officers are not being held responsible in the courts for police involved shootings of unarmed suspects but is likely also promoted by unwise decisions, like the one that authorized the placement of two large monuments to law enforcement on the plaza adjacent to the entrance to the highest court of the District of Columbia.<sup>769</sup>

For all of the reasons that the Council enacted Section 113 of Act 23-336, the Commission recommends that it make this legislation permanent.

**18. Recommendation: Expand the exclusionary rule to apply to all violations of rights protected by DC Law and under the First Amendment, Fourteenth Amendment, and District of Columbia Human Rights Act.**

**Discussion**

The exclusionary rule prohibits the government from introducing at trial evidence it obtained by violating certain constitutional rights of the accused.<sup>770</sup> The rule serves several purposes. For police officers, it “[compels] respect for the constitutional guaranty in the only effectively available way – by removing the incentive to disregard it.”<sup>771</sup> For judges, it eliminates a conflict of interest that would otherwise result from being “accomplices in the willful disobedience of a Constitution they are sworn to uphold.”<sup>772</sup> For the public, it “[assures] all potential victims of unlawful government conduct that the government would not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in government.”<sup>773</sup> If it operated perfectly, the rule would act as both a safeguard and a sanction. It would shield criminal defendants, as a class, from infringements of their rights; protect judicial integrity; and deter misconduct in a way that cannot be effectively achieved through civil liability alone.

In 1996, the United States Supreme Court considered whether selective or biased policing violates the Fourth Amendment, triggering the exclusionary rule, and determined it did not.<sup>774</sup> That case involved DC police officers who were racially profiling Black motorists for traffic enforcement. Then, as now, the “‘multitude of applicable traffic and equipment regulations’ [was] so large and so difficult to obey perfectly that virtually everyone [was] guilty of violation.”<sup>775</sup> And, then as now, MPD was choosing to conduct traffic stops of Black people far more frequently than others.<sup>776</sup> Although the Court noted, “the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause,” it did not go on to decide whether the exclusionary rule should apply and evidence should be suppressed when a violation of the Equal Protection Clause leads to the discovery of evidence in a criminal case.

Some lower courts have found that suppression is an appropriate remedy. In Texas, the Code of Criminal Procedure explicitly prohibits law enforcement from engaging in racial profiling and an exclusionary rule applies.<sup>777</sup> New Jersey courts have recognized the importance of reigning in selective enforcement strategies, particularly the targeting of Black motorists for traffic violations.<sup>778</sup>

An exclusionary sanction should apply at trial in all criminal cases wherein a government actor violates the accused’s rights under the Fourteenth Amendment’s Equal Protection Clause or the District of Columbia’s Human Rights Act.<sup>779</sup>

**19. Recommendation: The Council should ensure that citizens are able to redress concerns about police misconduct through civil litigation, including:**

- ☒ **Ensuring a private right of action for violations of statutes regulating police conduct.**
- ☒ **Tolling the 6-month notice requirement in DC Code § 12-309 for claimants who are imprisoned or facing criminal charges related to the arrest.**
- ☒ **Ending qualified immunity.**

## Discussion

### *Ensuring a Private Right of Action for Violations of Statutes Regulating Police Conduct*

As Chief Justice Marshall observed at the founding of the Republic, “[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.”<sup>780</sup> This is a fundamental tenet of the rule of law; without it, individuals do not have the means to protect and enforce their rights, which then become no more than hortatory. Additionally, as the Supreme Court has observed, enabling suits for the violation of rights exerts an important deterrent effect on would-be violators.<sup>781</sup> Without that deterrent, officials who would be in a position to violate the law face no consequences for doing so and are thus less likely to restrain themselves.

Unfortunately, not all DC laws pair remedies with rights. Indeed, some of the most important protections for our most basic rights (such as those of the First Amendment Assemblies Act, or FAAA, which restrict the manner in which law enforcement can police peaceful demonstrations) have been ruled unenforceable because they lack an explicit private cause of action.<sup>782</sup> This is particularly ironic in the case of the FAAA, because the reason why the Council decided against including an express cause of action in the first place was that the DC Office of the Attorney General assured the Council that the Act was *already* privately enforceable notwithstanding the absence of an express enforcement provision.<sup>783</sup> Therefore, violations and potential violations of the FAAA continue.<sup>784</sup>

To ensure that the laws passed by the Council are honored, they must be made enforceable.

### *Tolling the Six-Month Notice Requirement in DC Code § 12-309 for Claimants Who Are Imprisoned or Facing Criminal Charges Related to the Arrest*

The Council should amend DC Code § 12-309 to toll the six-month notice requirement for claimants who are incarcerated or facing criminal charges related to an arrest. Currently, DC law requires individuals filing personal injury or other damages claims against the DC government (including against the Metropolitan Police Department) to “give[] notice in writing” of their claims “within six months after the injury or damage was sustained.”<sup>785</sup> Thus, for an individual to hold MPD accountable for police misconduct, they must learn of this specific deadline and file a detailed written statement within six months. This requirement is difficult enough for the average individual who has experienced traumatic police encounters and lacks legal training; it is practically insurmountable when such a person is incarcerated and accordingly lacks access to the minimal civil legal resources available even to the ordinary person. And for individuals who suffered police misconduct that resulted in pending criminal charges, complying with the six-month deadline requires claimants to risk waiving core constitutional rights.

Tolling the six-month notice requirement for incarcerated individuals would be in step with other DC law provisions and the practices of other states. DC already recognizes generally that an otherwise-applicable statute of limitations is paused while a person is incarcerated.<sup>786</sup> In other words, the clock does not begin running on their claim until post-incarceration. Other states also relax filing deadlines for incarcerated people.<sup>787</sup> The Council should recognize that incarceration poses a serious resource and knowledge constraint impacting an individual’s ability to meet a legal notice deadline. Accordingly, the Council should toll the legal notice deadline for the period of incarceration, just like it does for statutes of limitations.

For individuals facing criminal charges related to the underlying police misconduct, Section 12-309’s notice requirements are in tension with their Fifth Amendment privilege against self-incrimination. Specifically, the

statute requires an individual to provide “the approximate time, place, cause, and circumstances of the injury or damage” to preserve their claims against the government for violation of their rights.<sup>788</sup> However, in providing details necessary to give notice and maintain their civil claims, individuals with simultaneous criminal charges may risk waiving their constitutional rights in their ongoing *criminal* proceedings by discussing facts that relate to both.<sup>789</sup> Accordingly, in the absence of protection, arrested individuals who experienced a constitutional violation may face the choice of losing their civil claim for the violation by exercising their right to remain silent *or* waiving their Fifth Amendment privilege by providing the notice needed to preserve their civil claim. The Council should amend the law to avoid imposing this unfair choice.

### *Ending Qualified Immunity*

Another critical reform to ensure that rights do not lack remedies is to mitigate the effects of the pernicious doctrine of qualified immunity. Under that rule, people whose constitutional rights were violated cannot sue police officers or other government officials for damages unless a specific legal precedent with almost identical facts placed it “beyond debate” that the actions at issue violated the Constitution. In practice, this means that countless violations go entirely unremedied—a fundamental affront to the rule of law. Government officials have been granted immunity for egregious violations, from a school principal who ordered a strip search of a middle-school student in violation of her privacy rights,<sup>790</sup> to President Nixon’s attorney general, who authorized warrantless wiretaps in violation of the Fourth Amendment.<sup>791</sup> And, of course, the primary beneficiaries of this get-out-of-court-free card are law enforcement officers—including in cases involving the use of deadly force.<sup>792</sup> Whereas for criminal defendants, who usually do not have legal training, “ignorance of the law is no excuse,” government officials under qualified immunity are held to a *lower* standard of compliance with the law, even though these officials are the people who have the most reason to know the law because they are responsible for enforcing it. Most fundamentally, qualified immunity undermines constitutional rights by encouraging officers to disregard those rights. As Supreme Court Justice Sotomayor has observed, qualified immunity “sends an alarming signal to law enforcement officers and the public:” that officers “can shoot first and think later.”<sup>793</sup>

One case here in the District that highlights the sweep and power of qualified immunity is *Black Lives Matter DC v. Trump*,<sup>794</sup> a case seeking redress for officers’ attack on civil rights demonstrators in Lafayette Square in June 2020—an attack that included tear gas, rubber bullets, and a baton charge. Defendants in the case include MPD officers, Park Police and federal law enforcement, and former Attorney General Bill Barr. They have all sought qualified immunity for tear gassing peaceful demonstrators who broke no laws and posed no threat. According to the latest filing on behalf of several of the defendants in the case, their conduct cannot be “clearly established” as unconstitutional unless plaintiffs can point to a prior case involving “a presidential appearance, an alleged dispersal order emanating from the Attorney General himself, a city-wide curfew and emergency order, [and] a large and potentially dangerous crowd near the President.” It’s obvious that the search for an identical case is futile and should be unnecessary, but given how strictly the doctrine has been applied, the defendants’ argument might prevail.

The justifications for the doctrine have been thoroughly debunked. The civil rights statute that the Court found to contain the doctrine, the Ku Klux Klan Act of 1871 (today known in relevant part as 42 U.S.C. § 1983), includes not a single word about any such protection; indeed, immunity is antithetical to that law’s purpose, which was to protect formerly enslaved individuals from discrimination and officially sanctioned violence in the postwar South. The Supreme Court developed qualified immunity based on its reading of history, but recent scholarship shows that the defense has no basis in the common law.<sup>795</sup> The Supreme Court’s most conservative member, Justice Thomas, agrees.<sup>796</sup> The policy justifications for qualified immunity are similarly flawed. The Court claims that the doctrine

protects officers from paying large judgments when they make a mistake,<sup>797</sup> and from lawsuits that could distract them from the performance of their duties.<sup>798</sup> But in fact, contrary to the Court’s assumption,<sup>799</sup> recent empirical research demonstrates that officers virtually never pay these judgments personally.<sup>800</sup> As to distraction, nearly all the work in these cases is done by government lawyers, not officers themselves; more fundamentally, having to answer for constitutional violations cannot be brushed aside as a “distraction” if the Constitution is to have real meaning.

Although qualified immunity is a doctrine of federal law, the District can take a critical step to blunt its impact: legislate an independent cause of action for constitutional violations that explicitly excludes the defense of qualified immunity. Colorado pioneered this approach last year in the wake of nationwide protests over the killing of George Floyd by Minneapolis police in May 2020.<sup>801</sup> Other states have followed its lead.<sup>802</sup> To deter officer misconduct, to ensure respect for Washingtonians’ constitutional rights, and to uphold the rule of law, the District should do likewise.

## 20. **Recommendation: Establish a 24/7 pre-arrest charging decision hotline.**

### **Discussion**

Most days in the District, dozens of people are booked, caged overnight, transported to two other locations, subjected to drug testing, and repeatedly interviewed only to find out that their case is “no-papered” and they are free to leave. However, in some jurisdictions such as Houston, arresting officers clear charges with a prosecutor as part of the arrest intake process. This early decision-making significantly reduces the number of no-paper cases in arraignment court, and educates officers on the kinds of charges that are likely to survive prosecutorial review. There is also evidence that it reduces the level of frustration felt by officers regarding decisions by prosecutors to decline a charge, and by prosecutors regarding decisions by police officers to arrest on charges that cannot be sustained in court.

### *The Process*

The model operates as follows: After an officer completes the first investigatory phase but prior to transporting and booking, the officer calls the relevant prosecutor’s office to establish probable cause and to confirm whether the prosecutor will agree to file any charges. The prosecutor then decides whether to:

- ☒ Accept the case and hold the person for an initial court appearance.
- ☒ Accept the case, book the person, and release them within 48 hours.
- ☒ Refer the person to a diversion program, such as a mental health treatment, without booking.
- ☒ Conditionally reject and instruct the officer as to what further investigation is needed (on scene or otherwise). Or:
- ☒ Decline to charge the person. (If more information supporting charges is discovered later, the officer is permitted to update their filing and seek an arrest warrant from a magistrate judge.)

The officer files a report in the intake system, naming the attorney who provisionally approved the arrest and the charges they approved. Before a papering decision is made, that report is reviewed along with the actual evidence stipulated in the phone call. If the second attorney agrees that the actual evidence supports the charges and that prosecution is appropriate, a charge is drafted, sworn, and forwarded to the clerk of court.

Officers are not required to call the prosecutor before citing and releasing a person to come to court; only if they intend to make a custodial arrest.

### *The Advantages*

For prosecutors, this model gives them more control over the investigation, including witness statements and the collection of tangible evidence. It also helps them build an early rapport with victims and other witnesses. The papering conversations provide an opportunity to train officers about substantive criminal law and procedure, to assess officers' credibility, and to uncover misconduct. Prosecutors report that they like the system because it helps them build stronger cases before arraignment, lending to their perceived legitimacy in the eyes of the court and the community.

For arrestees, the benefits are obvious. They do not have to endure the trauma of incarceration overnight or live with an arrest record for conduct that was never charged. They do not suffer other consequences of an arrest such as losing wages or finding emergency childcare and transportation. Pretrial Services and defense attorneys would also save considerable resources by interviewing and drug testing 30-50% fewer people per day. For example, in the District in 2015, more than half of the unauthorized use of a vehicle (UUV) arrests were no-papered by the US Attorney for the District of Columbia. Some portion of those would have become non-arrests under the Houston process, thereby saving time and money.

This recommendation finds additional support in the Phase II implementation report issued by the District's Task Force on Jails & Justice earlier this year.<sup>803</sup>

# Comments of Commissioner Robert S. Bennett

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It has been a privilege to serve on the District of Columbia Police Reform Commission and I am deeply grateful to the City Council for the opportunity. While I do not question the good faith of my colleagues, I believe I am obliged in my role as a Commissioner to inform the D.C. Council of the areas in which I disagree with them. Thus, I write here separately to outline my objections to a number today's recommendations. I hope the Council will consider my comments alongside the majority report. My views on those issues are based on my professional and personal experiences as a criminal defense lawyer, former federal prosecutor, and resident of the District for more than fifty years.

There has been extensive discourse throughout the United States over the last several years, intensifying in 2020, about whether our communities would benefit from “defunding the police.” Several of the recommendations announced by the Commission today would, if fully implemented, reduce funding for a particular method of policing or existing unit of the Metropolitan Police Department (“MPD”). However, an equal number of the recommendations would *increase* the funding to MPD. In my opinion, the goal of the Commission – and the intended result of its recommendations – is *not* to “defund the police,” but rather, to direct funding in strategic ways that will strengthen MPD and the services it provides. Smarter and more effective policing is the goal.

The recommendations to which I am opposed were crafted by the Commission to address some of our society's most difficult sociological and penological problems. I agree that these issues must be resolved. In my view, however, significant additional study and consideration is necessary before legal and structural changes are made to address those problems. Additionally, while all agree that citizens throughout our city deserve to live in safe neighborhoods where they need not fear harm from criminals or from police misconduct, I believe an anti-police bias at times pervaded the Commission's discussions and had an outsized effect on the group's deliberations, resulting in recommendations that are not in the best interests of the District. Additionally, we need more input from the voices of people who live in the areas most impacted by violent crime in the District. Some of the recommendations put forth by this Commission will hinder rather than help to meet the Commission's goals and thus I respectfully dissent from them.

### **Reductions to MPD Headcount and Budget Would Endanger Our City**

I disagree with the recommendation to decrease MPD's headcount and budget. Several of today's recommendations would increase MPD's obligations. At the same time, crime – including violent crime – is increasing.<sup>804</sup> First Amendment activity is increasing. Domestic terrorist groups, perhaps the greatest threat to our safety, are often active in the District. It would be a grave mistake to cut funding and personnel under these conditions.

It also is inappropriate to cap unbudgeted overtime pay. We do not know, in any year, what unplanned events will require police presence. In 2020, officers worked increased overtime because of the unprecedented pandemic response and extensive protests.<sup>805</sup> With fewer officers, MPD would pay even more overtime to cover such events. The force could be particularly vulnerable if a swath of officers were quarantined or otherwise unavailable.<sup>806</sup> Capping overtime pay at 3% of the budget is unworkable.

Repealing the statute that requires a minimum number of MPD personnel would leave our city vulnerable. I therefore oppose any reductions in police numbers or funding. It would be prudent to implement the other changes recommended by the Commission, evaluate their impacts, and revisit head count and budget in 2023.

### **The Age for Adult Criminal Liability Should Not Be Increased**

I object to the recommendation to increase the age limit for juvenile offenders from 18 to 21. That change would be dangerous given the violent crime committed by individuals in that age range.<sup>807</sup> Juvenile crime is increasing.<sup>808</sup> Research has shown that raising the age limit does not reduce juvenile crime or recidivism.<sup>809</sup>

While younger adults lack full reasoning and impulse control, D.C. law already accounts for those variables. The D.C. Code contains a safety-valve provision for non-violent offenders aged 18-24, the Youth Rehabilitation Act ("YRA"), which gives judges discretion to consider a defendant's age and related factors. If the judge determines a crime is one of "youthful indiscretion," she can sentence the defendant under the YRA, which allows the conviction to be set aside after completion of the sentence and the record sealed. In all such cases, the judge must explain her decision regarding whether to do so. The YRA appropriately balances the rights of offenders and the community.

### **Consent Searches Are Necessary and Should Not Be Eliminated**

The Commission has made several recommendations that address the use of consent searches by MPD officers. There is no doubt that consent searches have in some cases been abused by the police in the United States, particularly when used during investigations in minority and socioeconomically disadvantaged communities. The use of consent searches raises difficult questions, particularly with respect to the policing of youth. I commend the Commission for its focus on these issues and wholeheartedly agree that serious changes are in order.

However, I disagree with the recommendations issued that would ban the use of consent searches. Consent searches have long been recognized as a legitimate means of investigation and a fundamental strategy for crime prevention and detection for decades. The use of consent searches in many cases promotes efficiency in law enforcement. Any individual who wishes to challenge the appropriateness of a consent search has the right to seek judicial review.

I do believe that some limitations on consent searches are appropriate to mitigate the risk of abuse, and there are certainly middle-of-the-road approaches that could provide needed safeguards. For example, the D.C. Code could be

amended to (1) permit consent searches of youth only when counsel or a parent or guardian is present when consent is given for the youth to be searched; and (2) require that all consent searches be witnessed by at least two officers or captured on body cam or dash cam video. I believe further consideration of such alternate proposals should precede any change to D.C. law on this topic.

### **Changes To Policing In Schools Must Be Reasonable**

I agree with my fellow Commissioners that the police should be taken out of schools and that weapons carried by on duty or off duty officers should not be permitted in school buildings unless an officer is responding to the school for official police business. However, I do not agree with the Commission's recommendation that the D.C. Council should remove non-violent felony convictions from the list of disqualifiers for individuals seeking to volunteer in D.C. Public Schools or Public Charter Schools. I believe this would open a Pandora's box of trouble for the District of Columbia. It exposes the District to liability and litigation risk. Further, putting the burden on school administrators to "vet" proposed volunteers and their particular felony convictions to determine if they should be disqualifying would create an unnecessary system of school-level bureaucracy and inevitably unfair and uneven application between similarly situated people at different schools. It also does not make sense to remove police officers from schools and simultaneously relax the restrictions on non-violent felons volunteering in them.

### **The Role of Qualified Immunity In Effective Policing**

I disagree with the recommendation that the D.C. Council should eliminate the doctrine of qualified immunity under District law.<sup>810</sup> While I agree with the Commission that we should strive to "ensure that citizens are able to redress concerns about police misconduct through civil litigation," it is not necessary to eliminate qualified immunity to meet that goal. The perceived benefits of such a change also would be outweighed by its disadvantages.

While the legal standards surrounding qualified immunity have evolved over time, its original rationale remains true: holding officers liable for harm caused by their actions even when they have acted in good faith would have an untenable chilling effect on police activity. Officers are asked to intervene in dangerous, rapidly-evolving encounters with individuals who may have dangerous intent. No two situations are identical, and we ask them to rely on their own judgment about how to respond. If officers were asked to carry this significant obligation without some form of legal protection, the risk would be overwhelming.

Additionally, this change would make it harder for the District to recruit officers, who may choose to work in competing jurisdictions that support qualified immunity. It would draw a significant distinction between MPD officers and other civil servants, with officers receiving comparatively less protection despite the riskier role they play for our government. Qualified immunity is an important part of maintaining an effective police force. Eliminating it would be a mistake.

### **Conclusion**

Finally, while the Commission was not asked to estimate the costs of today's recommendations, dozens of them would require significant financial and practical steps for implementation. These recommendations will carry enormous costs and those costs cannot be ignored. Of the dozens of recommendations issued by the Commission today, I have objected to only a handful. I did not come into this process as an obstructionist. However, there are serious repercussions to the proposed changes. I believe it would be dangerous and foolhardy to proceed without further study.



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# Appendix A: All Recommendations Addressing Provisions in the Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020

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## **Title I. Improving Police Accountability and Transparency**

### **Subtitle A. Prohibiting the Use of Neck Restraints**

Amend. See Section V, Recommendation 18.

### **Subtitle B. Improving Access to Body-Worn Camera Video Recordings**

Amend. See Section VIII, Recommendations 4, 14, and 15.

### **Subtitle C. Office of Police Complaints Reforms**

Amend. See Section VIII, Recommendations 2 and 3.

### **Subtitle D. Use of Force Review Board Membership Expansion**

Make permanent. See Section V, Recommendation 22.

### **Subtitle E. Anti-Mask Law Repeal**

Make permanent. See Section V, Recommendation 17.

**Subtitle F. Limitations on Consent Searches**

Amend. See Section V, Recommendation 8.

**Subtitle G. Mandatory Continuing Education Expansion; Reconstituting the Police Officers Standards and Training Board**

Amend. See Section VII, Recommendations 2, 3, 5, and 6.

**Subtitle H. Identification of MPD Officers During First Amendment Assemblies as Local Law Enforcement**

Make permanent. See Section V, Recommendation 23.

**Subtitle I. Preserving the Right to Jury Trial**

Make permanent. See Section VIII, Recommendation 17.

**Subtitle J. Repeal of Failure to Arrest Crime**

Make permanent. See Section V, Recommendation 16.

**Subtitle K. Amending Minimum Standards for Police Officers**

Make permanent. See Section VII, Recommendation 6.

**Subtitle L. Police Accountability and Collective Bargaining Agreements**

Make permanent. See Section VIII, Recommendation 7.

**Subtitle M. Officer Discipline Reforms**

Amend. See Section VIII, Recommendation 6.

**Subtitle N. Use of Force Reforms**

Make permanent. See Section V, Recommendation 19.

**Subtitle O. Restrictions on the Purchase and Use of Military Weaponry**

Make permanent. See Section V, Recommendation 20.

**Subtitle P. Limitations on the Use of Internationally Banned Chemical Weapons, Riot Gear, and Less-Lethal Projectiles**

Make permanent. See Section V, Recommendation 24.

**Subtitle Q. Police Reform Commission**

**Subtitle R. Metro Transit Police Department Oversight and Accountability**

Not addressed.

**Title II. Building Safe and Just Communities**

**Subtitle A. Restore the Vote**

Not addressed.

# Appendix B:MPD Data Requests

Data requested	Date of initial request to MPD	Received from MPD?	Date received from MPD
The number of search warrants that were sought, obtained, and executed each year from 2014 to 2019.	Sep 25, 2020	No	
The locations (in aggregate) of these search warrants for each year. This could be by ward or PSA.	Sep 25, 2020	No	
Aggregate information on any offenses associated with search warrants by year.	Sep 25, 2020	No	
Number, type, and outcome of all stops, searches, and arrests conducted by any member of the Crime Suppression Team between 10/1/2018 and 10/1/2020.	Nov 10, 2020	No	
Description of MPD's Crime Suppression Teams, including, for example, reporting structure; number of teams; number of officers on each team; where and when deployed; purpose; metrics upon which the performance of the teams and/or individual officers on teams are evaluated.	Nov 10, 2020	No	
General orders or other directives relevant specifically to the Crime Suppression Teams.	Nov 10, 2020	Yes	Feb 16, 2021
Whether a Crime Suppression Team, or a member(s) of the Crime Suppression Team were involved in the death of Karon Hylton.	Nov 10, 2020	Yes	Nov 30, 2020
Number, type, and outcome of all stops, searches, and arrests conduct by any member of NSID unit between 10/1/2018 and 10/1/2020.	Nov 10, 2020	No	
Description of MPD's NSID units, including, for example, reporting structure; number of teams; number of officers on each team; where and when deployed; purpose; metrics upon which the performance of the teams and/or individual officers on teams are evaluated.	Nov 10, 2020	No	
General orders or other directives relevant specifically to NSID units.	Nov 10, 2020	Yes	Feb 16, 2021
Any additions to, or disagreements with, the September 2020 report by the National Police Foundation regarding MPD's NSID.	Nov 10, 2020	No	
Result of investigations (i.e., finding for each allegation investigated, and any disciplinary or other response) for investigation of the incident related to DC NSID/GRU photo of officers posing with skull and crossbones/Vest Up One in the Chamber photo, and where involved officers are currently assigned within MPD.	Nov 10, 2020	Yes	Nov 24, 2020
Result of investigations (i.e., finding for each allegation investigated, and any disciplinary or other response) for incident involving officer Vicent Altieri wearing a "sun cross"/"jump-outs" t-shirt to court; and where the involved officer is currently assigned within MPD:	Nov 10, 2020	Yes	Nov 24, 2020

Any other information you believe it would be helpful for the DC Police Reform Commission to review related to the above-referenced units.	Nov 10, 2020	No	
Data, by subject officer, for the last two years concerning criminal referrals to the USAO regarding MPD officers and other employees, including the number of criminal referrals, the time it takes the USAO to either file charges or provide a Declination Letter, and the criminal and administrative outcomes of these cases.	Nov 14, 2020	Yes	Mar 8, 2021
The report for the last two years the MPD has provided to the Mayor and the Council pursuant to DC Law Chapter 10A, section 5-1032, concerning misconduct and grievances filed by/against members of their respective departments; the number of individuals against whom misconduct allegations are substantiated or not sustained (i.e., allegations could neither be proven nor disproven); and the discipline meted out for substantiated allegation.	Nov 14, 2020	No (MPD has never provided such a report)	
Data for the last two years, by subject officer, of final MPD adverse action disciplinary decisions and the outcomes following appeal to either arbitration or OEA, including the type of misconduct at issue.	Nov 14, 2020	Yes	Mar 8, 2021
The recruit and in-service training curricula on stops, pat-downs, and searches under General Order 304.10	Dec 14, 2020	No	
Regarding the sex trafficking unit, how many youth were referred from CPS?	Dec 14, 2020	Yes	Mar 8, 2021
Regarding the sex trafficking unit, with those that were suspected to be trafficking, how many were confirmed? How many boys/men? Girls/women?	Dec 14, 2020	Yes	Mar 8, 2021
Regarding the sex trafficking unit, how many referrals to programs were made?	Dec 14, 2020	Yes	Mar 8, 2021
Regarding the sex trafficking unit, how many youth were referred from foster care?	Dec 14, 2020	Yes	Mar 8, 2021
Regarding the sex trafficking unit, how many youth not in care?	Dec 14, 2020	Yes	Mar 8, 2021
Regarding the sex trafficking unit, how many repeat referrals?	Dec 14, 2020	Yes	Mar 8, 2021
Regarding the sex trafficking unit, what are the locations of high-risk trafficking areas?	Dec 14, 2020	Yes	Mar 8, 2021
School campus (student) arrest data [including disaggregation by crime/violation].	Dec 14, 2020	No	
The stops data spreadsheets included on MPD's webpage (see, e.g., Stop Data (1 of 3) updated through the most recent date on which data is available, with the following additional data for each stop:	Dec 14, 2020	No	
Whether the stop was a pedestrian, traffic, bicycle, or boat stop.	Dec 14, 2020	No	
The assignment of the officer who made the stop (including but not limited to Patrol, Crime Suppression Team, and NSID-Gun Recovery Unit).	Dec 14, 2020	No	
All reports from a random sample of 10 pre-arrest "probable cause" searches of persons (not property) arising from stops in the July 22 – Dec. 31, 2019 NEAR Act reporting period.	Dec 14, 2020	No	
A list of the names of the firms that employ SPO.	Dec 17, 2020	No	
<b>Related to uses of force (including deployment whether on or off leash, and whether there was a bite or not) involving K9s for 2018 &amp; 2019:</b> Number of incidents.	Dec 18, 2020	Yes	Mar 8, 2021
<b>Related to uses of force (including deployment whether on or off leash, and whether there was a bite or not) involving K9s for 2018 &amp; 2019:</b> Number of officers who used force involving K9s; & officers reporting more than one use of force involving a K9.	Dec 18, 2020	Yes	Mar 8, 2021

<b>Related to uses of force (including deployment whether on or off leash, and whether there was a bite or not) involving K9s for 2018 &amp; 2019:</b> Uses of force by district.	Dec 18, 2020	Yes	Mar 8, 2021
<b>Related to uses of force (including deployment whether on or off leash, and whether there was a bite or not) involving K9s for 2018 &amp; 2019:</b> Officer and subject demographic information including, at a minimum, race/ethnicity; gender; and age.	Dec 18, 2020	Yes	Mar 8, 2021
<b>Related to uses of force (including deployment whether on or off leash, and whether there was a bite or not) involving K9s for 2018 &amp; 2019:</b> Alleged offense in each instance where a K9 was deployed and in each instance where an individual was bitten by a K9, and number of incidents in which subject person was armed with a firearm.	Dec 18, 2020	Yes	Mar 8, 2021
<b>Related to uses of force (including deployment whether on or off leash, and whether there was a bite or not) involving K9s for 2018 &amp; 2019:</b> Number of instances that resulted in injuries to the officer or subject.	Dec 18, 2020	Yes	Mar 8, 2021
<b>What curricula are used for pre-service and in-service training on:</b> Use of force and other tactics.	Dec 18, 2020	Yes	Feb 2, 2021
<b>What curricula are used for pre-service and in-service training on:</b> Recruitment and training.	Dec 18, 2020	No	Feb 2, 2021
<b>Frequency of in-service training for:</b> Search warrants.	Dec 18, 2020	Yes	Feb 2, 2021
<b>Frequency of in-service training for:</b> Stops, searches, and frisks.	Dec 18, 2020	Yes	Feb 2, 2021
<b>Frequency of in-service training for:</b> Vehicle stops and searches.	Dec 18, 2020	Yes	Feb 2, 2021
<b>Frequency of in-service training for:</b> Use of force and other tactics.	Dec 18, 2020	Yes	Feb 2, 2021
<b>Frequency of in-service training for:</b> Recruitment and training.	Dec 18, 2020	No	
<b>Who delivers officer pre-service and in-service trainings for the following methods:</b> Search warrants.	Dec 18, 2020	Yes	Feb 2, 2021
<b>Who delivers officer pre-service and in-service trainings for the following methods:</b> Stops, searches, and frisks.	Dec 18, 2020	Yes	Feb 2, 2021
<b>Who delivers officer pre-service and in-service trainings for the following methods:</b> Vehicle stops and searches.	Dec 18, 2020	Yes	Feb 2, 2021
<b>Who delivers officer pre-service and in-service trainings for the following methods:</b> Use of force and other tactics.	Dec 18, 2020	Yes	Feb 2, 2021
<b>Who delivers officer pre-service and in-service trainings for the following methods:</b> Recruitment and training.	Dec 18, 2020	No	
<b>Hours of training that are dedicated for pre-service and in-service:</b> Search warrants.	Dec 18, 2020	No	
<b>Hours of training that are dedicated for pre-service and in-service:</b> Stops, searches, and frisks.	Dec 18, 2020	No	
<b>Hours of training are dedicated for pre-service and in-service:</b> Vehicle stops and searches	Dec 18, 2020	No	
<b>Hours of training that are dedicated for pre-service and in-service:</b> Use of force and other tactics.	Dec 18, 2020	No	
<b>Hours of training that are dedicated for pre-service and in-service:</b> Recruitment and training.	Dec 18, 2020	No	
<b>How is training delivered: lecture, scenario-based, practicum, other methods for each method:</b> Search warrants.	Dec 18, 2020	No	
<b>How is training delivered: lecture, scenario-based, practicum, other methods for each method:</b> Stops, searches, and frisks.	Dec 18, 2020	No	
<b>How is training delivered: lecture, scenario-based, practicum, other methods for each method:</b> Vehicle stops and searches.	Dec 18, 2020	No	

<b>How is training delivered: lecture, scenario-based, practicum, other methods for each method:</b> Use of force and other tactics.	Dec 18, 2020	No	
<b>How is training delivered: lecture, scenario-based, practicum, other methods for each method:</b> Recruitment and training.	Dec 18, 2020	No	
What are the training and academic credentials of members of pre-service and in-service academies?	Dec 18, 2020	Yes	Feb 2, 2021
<b>What community partners make up the training cadre for in-service and pre-service?</b> Mental health professional; community-based advocates, sexual abuse advocates, intimate partner abuse advocates; attorneys for legal training; community and neighborhood advocates; communications specialists to provided de-escalation training?	Dec 18, 2020	Yes	Feb 2, 2021
<b>What is the hiring process and what factors are considered as you select applicants?</b> Application process; educational requirements; assessment center component; psychological assessment; assessment for aggressiveness and intimate partner abuse history; critical and analytical thinking; problem-solving skills; communications skills; writing skills; multicultural/multiracial, multiethnic intelligence and awareness?	Dec 18, 2020	Yes	Feb 2, 2021
Entire pre-service academy officer's training manual	Dec 18, 2020	Yes	Feb 2, 2021
Are you able to send us a redacted warrant return?	Dec 18, 2020	No	
What types of surveillance technologies are being used in DC?	Dec 18, 2020	No	
How many times have weapons reportedly been drawn and pointed since general order 901.07 started requiring the reporting of it in November 2017?	Jan 25, 2021	Yes	Jan 25, 2021
A list of all MPD IT systems housing salient data—e.g., data on stops/searches/arrests, misconduct investigations and discipline, uses of force, and officer training.	Feb 16, 2021	Yes	Mar 8, 2021
<b>Related to uses of force (including deployment whether on or off leash, and whether there was a bite or not) involving K9s for 2018 &amp; 2019:</b> Identity of vendor that provides MPD K9s and/or training and certification standards used by MPD, including last date of certification for each K9 and K9 score/narrative report.	Feb 16, 2021	No	
How many contacts with individuals under age 18 suspected of being a victim of sex trafficking?	Feb 16, 2021	No	
% of sex trafficking victims referred to specialized services.	Feb 16, 2021	No	
Amount and nature of training for MPD specifically on the dynamics of sex trafficking and coercive sex work.	Feb 16, 2021	Yes	Mar 8, 2021
The count of "school-based events" [defined as "crimes and incidents involving schools, students, and school staff that occur on public, charter, or private school grounds or within close proximity to schools or safe passage zones"]. We would like the count to be broken down by the type of the school-based event and the names of the schools if possible. And, we specifically want to know the number of times police were called to school grounds.	Feb 16, 2021	No	
The count of "school-based arrests" [defined as "an arrest of a student for any activity conducted on school grounds, during off-campus school activities (including while taking school transportation), or due to a referral by any school official"]. We would like this broken down by reason for arrest, unique individuals (in other words a count that excludes individuals with repeated arrests), and the name of the schools.	Feb 16, 2021	Yes	Mar 8, 2021

How many current officers have completed the 40-hour Crisis Intervention Officer (CIO) training?	Feb 16, 2021	Yes	Mar 8, 2021
What is the average and median response time for CIOs to a scene?	Feb 16, 2021	No	
Approximately how many FD-12 (involuntary commitment) forms are filed each month?	Feb 16, 2021	No	
During their time at the Academy, how many hours of training do recruits receive on how to identify and de-escalate situations involving mental health consumers? How many recruits (number and as percentage of all recruits) in the past year have not received this training because of DBH availability, conflicting responsibilities, etc.?	Feb 16, 2021	Yes	Mar 8, 2021

# Appendix C: Committee Membership

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## *Committee on Police in Schools/Policing Youth*

**Samantha Davis, Co-Chair**

Elena Bell

Herb Gray

Emily Gunston

Ron Hampton

**LaShunda Hill, Co-Chair**

Naïké Savain

Sultan Shakir

Mignon Smith

## *Committee on Assessing and Expanding Violence Reduction Efforts—Including Non-Police Responses*

**LaShunda Hill, Co-Chair**

Robert Bennett

Samantha Davis

Emily Gunston

**Sultan Shakir, Co-Chair**

Ron Hampton

Corwin Knight

## *Committee on Building Up Non-Police Community Health & Safety Interventions*

**Herb Gray, Chair**

Elena Bell

Kent Boese

Tina Frundt

Delonte Gholston

Emily Gunston

Jeffrey Richardson

Patrice Sulton

*Committee on Reforms to MPD Practices: Stops, Searches, Recruitment, and Training*

**Patrice Sulton, Co-Chair**

**Kurt Vorndran, Co-Chair**

Kent Boese

Jeffrey Richardson

George Lambert

Mignon Smith

*Committee on MPD Accountability and Oversight: Internal and External*

**Delonte Gholston, Co-Chair**

**Naïké Savain, Co-Chair**

Robert Bennett

George Lambert

Tina Frundt

Kurt Vorndran

Corwin Knight

# Appendix D: Record of the Commission's Final Vote on Recommendations

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All recommendations not listed below were passed unanimously by commissioners present and voting on March 22, 2021. (Note: Commissioner Emily Gunston, who joined the Commission as a representative of the Attorney General, participated in the Commission's inquiry but abstained from voting on final recommendations.)

The **Reduce and Realign Recommendation** was passed with 17 commissioners in favor of the recommendation. 1 commissioner (Emily Gunston) abstained from voting on the recommendation. The recommendation was opposed by 1 commissioner: Robert Bennett.

**Section 3, Recommendation 1(c)** was passed with 16 commissioners in favor of the recommendation. 1 commissioner (Emily Gunston) abstained from voting on the recommendation. The recommendation was opposed by 2 commissioners: Robert Bennett and Mignon Smith.

**Section 4, Recommendation 5** was passed with 14 commissioners in favor of the recommendation. 4 commissioners (Samantha Davis, Emily Gunston, Jeffrey Richardson, and Patrice Sulton) abstained from voting on the recommendation. The recommendation was opposed by 1 commissioner: Herb Gray.

**Section 5, Recommendation 3(b)** was passed with 17 commissioners in favor of the recommendation. 1 commissioner (Emily Gunston) abstained from voting on the recommendation. The recommendation was opposed by 1 commissioner: Robert Bennett.

**Section 5, Recommendation 8** was passed with 16 commissioners in favor of the recommendation. 2 commissioners (Robert Bennett and Emily Gunston) abstained from voting on the recommendation. The recommendation was opposed by 1 commissioner: Robert Bobb.

**Section 5, Recommendation 12(b)** was passed with 11 commissioners in favor of the recommendation. 1 commissioner (Robert Bennett) abstained from voting on the recommendation. The recommendation was opposed by 6 commissioners: Kent Boese, Samantha Davis, Tina Frundt, George Lambert, Naïké Savain, and Mignon Smith.

**Section 5, Recommendation 18** was passed with 17 commissioners in favor of the recommendation. 2 commissioners (Robert Bennett and Emily Gunston) abstained from voting on the recommendation.

**Section 5, Recommendation 26** was passed with 17 commissioners in favor of the recommendation. 2 commissioners (Emily Gunston and Corwin Knight) abstained from voting on the recommendation.

**Section 5, Recommendation 27** was passed with 16 commissioners in favor of the recommendation. 3 commissioners (Samantha Davis, Emily Gunston, and Mignon Smith) abstained from voting on the recommendation.

**Section 6, Recommendation 1** was passed with 17 commissioners in favor of the recommendation. 1 commissioner (Emily Gunston) abstained from voting on the recommendation. The recommendation was opposed by 1 commissioner: Robert Bennett.

**Section 6, Recommendation 5** was passed with 15 commissioners in favor of the recommendation. 3 commissioners (Robert Bennett, Corwin Knight, and Jeffrey Richardson) abstained from voting on the recommendation.

**Section 6, Recommendation 6** was passed with 16 commissioners in favor of the recommendation. 2 commissioners (Robert Bobb and Robert Bennett) abstained from voting on the recommendation.

**Section 7, Recommendation 1(c)** was passed with 9 commissioners in favor of the recommendation. 8 commissioners (Robert Bobb, Samatha Davis, Tina Frundt, LaShunda Hill, Corwin Knight, Naïké Savain, Sultan Shakir, and Patrice Sulton) voted in favor of an alternative recommendation that did not pass. 1 commissioner (Robert Bennett) abstained from voting on either recommendation.

**Section 7, Recommendation 2** was passed with 12 commissioners in favor of the recommendation. 5 commissioners (Samantha Davis, Tina Frundt, Jeffrey Richardson, Naïké Savain, and Mignon Smith) abstained from voting on the recommendation. The recommendation was opposed by 1 commissioner: Robert Bennett.

**Section 7, Recommendation 4** was passed with 17 commissioners in favor of the recommendation. The recommendation was opposed by 1 commissioner: Robert Bennett.

**Section 7, Recommendation 7** was passed with 10 commissioners in favor of the recommendation. 8 commissioners (Robert Bobb, Christy Lopez, Robert Bennett, Herb Gray, Corwin Knight, Naïké Savain, and Mignon Smith) voted in favor of alternative recommendations that did not pass.

**Section 7, Recommendation 8** was passed with 14 commissioners in favor of the recommendation. 3 commissioners (Robert Bobb, Robert Bennett, and Herb Gray) voted in favor of an alternative recommendation that did not pass. 1 commissioner (Kurt Vorndran) abstained from voting on either recommendation.

**Section 7, Recommendation 10** was passed with 17 commissioners in favor of the recommendation. 1 commissioner (Robert Bennett) abstained from voting on the recommendation.

**Section 8, Recommendation 2(c)** was passed with 13 commissioners in favor of the recommendation. 4 commissioners (Robert Bobb, Robert Bennett, Tina Frundt, and Herb Gray) voted in favor of an alternative recommendation that did not pass. 1 commissioner (Jeffrey Richardson) abstained from voting on either recommendation.

**Section 8, Recommendation 13** was passed with 15 commissioners in favor of the recommendation. The recommendation was opposed by 3 commissioners: Samantha Davis, Tina Frundt, and Jeffrey Richardson.

**Section 8, Recommendation 19** was passed with 17 commissioners in favor of the recommendation. The recommendation was opposed by 1 commissioner: Robert Bennett.

# Endnotes

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<sup>1</sup> Commissioner Gunston, who joined the Commission as a representative of the Attorney General, participated in the Commission’s inquiry but abstained from voting on final recommendations.

## **Introduction**

<sup>2</sup> Amanda Michelle Gomez, “District line daily: More than 16,000 testimonies,” *Washington City Paper*, June 16, 2020, <https://washingtoncitypaper.com/article/323205/more-than-16000-testimonies/> (accessed March 22, 2021).

<sup>3</sup> DC Act 23-336.

<sup>4</sup> J. L. Alpert, “The origin of slavery in the United States—the Maryland precedent,” *The American Journal of Legal History*, 14(3), (1970): 189-221.

<sup>5</sup> *The Slavery Code of the District of Columbia, Together with Notes and Judicial Decisions Explanatory of the Same* (Washington: L. Towers & Co. Printers, 1862), 24.

<sup>6</sup> *Id.*, 30-31.

<sup>7</sup> Thomas Smallwood, “A Narrative of Thomas Smallwood, (Coloured Man:) Giving an Account of His Birth—The Period He Was Held in Slavery—His Release—and Removal to Canada, Etc. Together With an Account of the Underground Railroad. Written by Himself,” (Toronto: James Stephens, 5, City Buildings, King Street East), (1851): 13.

<sup>8</sup> National Constitution Center Staff, “Looking back: One of the ugliest protests in White House history,” August 16, 2019, National Constitution Center; *An Act to establish an auxiliary watch for the protection of public and private property in the city of Washington*, August 23, 1842.

<sup>9</sup> Sylvester, *supra* note 1, at 30.

<sup>10</sup> *Id.*, 36.

<sup>11</sup> Annual Report of Secretary of Interior, 1870, and Reports of Subordinate Officers, Ninth Annual Report of the Board of Metropolitan Police for the Year of 1870, 930. Total Black population is based on Decennial Census data from 1870.

<sup>12</sup> See, for instance: Washington Post Staff, “Model Police Force,” *The Washington Post*, July 30, 1905, 12.

<sup>13</sup> E. Clark, “Hey, You, Pull Up to the Curb!” *The Washington Post*, September 1, 1929, SM7.

<sup>14</sup> H.F. Wentworth, “All Policemen To Be Trained For Traffic,” *The Washington Post*, October 5, 1938, 16.

<sup>15</sup> Report of the Commissioners of the District of Columbia, Report of the Major and Superintendent of the Metropolitan Police, District of Columbia, 1929, 21-22.

<sup>16</sup> Washington Post Staff, “Brutal Police Blamed for Fear of Riots,” *The Washington Post*, August 1, 1938, 11.

<sup>17</sup> An Act To amend section one of an Act entitled “An Act relating to the Metropolitan police of the District of Columbia,” approved February twenty eighth, nineteen hundred and one, June 8, 1906, 34 Stat. 222, ch. 3056.

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- <sup>18</sup> A. Lewis, "New Police Complaint Plan Gains," *The Washington Post*, September 22, 1964, C1.
- <sup>19</sup> R.G. Kaiser, "Complaint Unit Doing Poorly," *The Washington Post*, July 19, 1967, B1.
- <sup>20</sup> L. Johnson, "Text of Message on City Rule, War on Crime," *The Washington Post*, February 28, 1967, A10.
- <sup>21</sup> PL 84-514 (1956).
- <sup>22</sup> PL 87-60 (1961).
- <sup>23</sup> President Richard Nixon: Special Message to the Congress on Drug Abuse Prevention and Control, June 17, 1971.
- <sup>24</sup> See, for instance: James Forman Jr., *Locking up our own: Crime and punishment in Black America*. (Farrar, Straus and Giroux, (2017).
- <sup>25</sup> *Id.*
- <sup>26</sup> L. Downie Jr., "City Acts In Crime Crusade," *The Washington Post*, February 2, 1969, 1.
- <sup>27</sup> A. Barnes, "Tougher Crime Action Seen," *The Washington Post*, January 31, 1971, A1.
- <sup>28</sup> See: James Forman Jr., *Locking Up Our Own: Crime and Punishment in Black America*; Testimony of James Forman Jr. before Commission on February 23, 2021.
- <sup>29</sup> Peter Perl, "Police Union To Shun Review Board Hearings," *The Washington Post*, August 3, 1983, A1; Victoria Churchville, "Police Board Concedes It's a Failure," *The Washington Post*, December 18, 1987, B1.
- <sup>30</sup> *Id.*
- <sup>31</sup> Michael A. Fletcher, "Death of Police Review Panel Leaves District Cases in Limbo," *The Washington Post*, June 25, 1995, B3.
- <sup>32</sup> Keith A. Harrison and Mary Pat Flaherty, "Cutting Corners at Police Academy," *The Washington Post*, August 29, 1994, A1.
- <sup>33</sup> Keith A. Harrison and Mary Pat Flaherty, "District Police Are Still Paying for Forced Hiring Binge," *The Washington Post*, August 28, 1994, A1.
- <sup>34</sup> Jeff Leen et al., "District Police Lead Nation in Shootings," *The Washington Post*, November 15, 1998.
- <sup>35</sup> *Id.*
- <sup>36</sup> David Jackson, "Holes in the Files," *The Washington Post*, November 17, 1998, A1.
- <sup>37</sup> Memorandum of Agreement Between the United States Department of Justice and the District of Columbia and the District of Columbia Metropolitan Police Department (June 13, 2001).
- <sup>38</sup> The Office of the Independent Monitor, Final Report for the Metropolitan Police Department (2008).
- <sup>39</sup> The Bromwich Group LLC, "The Durability of Police Reform: The Metropolitan Police Department and Use of Force, 2008-2015," A report of the Office of the District of Columbia Auditor, (2016) xvii.
- <sup>40</sup> The Bromwich Group LLC and Steptoe & Johnson, "The Metropolitan Police Department and the Use of Deadly Force: Four Case Studies 2018-2019," A report of the Office of the District of Columbia Auditor, (2021) xvii.

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<sup>41</sup> For a complete list of data requests made by the Commission and the outcomes of those requests, see Appendix B: MPD Data Requests.

<sup>42</sup> Colleen Grablick, “Update: DC police publish six months of stop and frisk data following ACLU law suit,” *DCist*, February 24, 2021, <https://dcist.com/story/21/02/17/aclu-sues-dc-police-missing-stop-and-frisk-data/> (accessed March 22, 2021).

## **Realign and Reduce**

<sup>43</sup> The Justice Collaborative Institute, *The Case for Violence Interruption as An Alternative to Policing* (June 2020), <https://www.filesforprogress.org/memos/violence-interruption.pdf> (accessed March 18, 2021).

<sup>44</sup> “Reducing Violence Without Police: A Review of Research Evidence,” *John Jay College of Criminal Justice Research and Evaluation Center*, <https://johnjayrec.nyc/2020/11/09/av2020/> (Including 11 recommendations such as: “place a priority on young people,” and “increase pro-social bonds, promote anti-violence norms, and provide social supports and opportunities.”); Igor Derysh, “Did we defund the police? No, but “big changes are happening” even after protests die down,” *Salon*, December 25, 2020, <https://www.salon.com/2020/12/25/did-we-defund-the-police-no-but-big-changes-are-happening-even-after-protests-die-down/> (accessed March 29, 2021); Sam Levin, “These US cities defunded police: ‘We’re transferring money to the community,’” *The Guardian*, March 11, 2021, <https://www.theguardian.com/us-news/2021/mar/07/us-cities-defund-police-transferring-money-community#:~:text=New%20York%2C%20Los%20Angeles%2C%20Chicago,impacts%20of%20their%20new%20budgets> (accessed March 29, 2021).

<sup>45</sup> DC Fiscal Policy Institute, “Testimony of the DC Fiscal Policy Institute At the Public Budget Hearing of the Metropolitan Police Department DC Council Committee on the Judiciary and Public Safety, June 15, 2020,” <https://www.dcfpi.org/wp-content/uploads/2020/06/6.15.20-MPD-Budget-Hearing-DCFPI.pdf> (accessed March 29, 2021).

<sup>46</sup> Office of the Budget Director, “Budget Look up tool,” <https://dccouncilbudget.editorx.io/2021explained/dashboard> (accessed March 29, 2021).

<sup>47</sup> For the purposes of this recommendation, “demilitarize” means reducing the use of military-style equipment and tactics by MPD during daily police activities, as well as in the execution of search warrants and while policing protests. This includes, among other things, close oversight and restrictions of tear gas and other chemical agents to ensure that they are only used when necessary to prevent greater harm; and prohibiting the use of rubber bullets.

<sup>48</sup> Eliana Golding, *What’s in the FY 2021 Police and Public Safety Budget?* (Washington, DC: DC Fiscal Policy Institute, 2020) <https://www.dcfpi.org/all/whats-in-the-fy-2021-police-and-public-safety-budget/> (accessed March 29, 2021).

<sup>49</sup> Eliana Block, “VERIFY: Does DC have more police per capita than any other US city?” *WUSA9*, July 15, 2021, <https://www.wusa9.com/article/news/verify/verify-does-dc-have-more-police-per-capita-than-any-other-us-city/65-9fae328a-5da3-4e0f-8e54-009f48b97b57> (accessed March 29, 2021); Federal Bureau of Investigation, FBI 2018 Crime in the United States Table 78 Full-time Law Enforcement Employees, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-78/table-78.xls/view>.

<sup>50</sup> Katherine Shaver, “DC has highest “intensity” of gentrification of any US city, study says,” *Washington Post*, March 19, 2019, <https://www.washingtonpost.com/transportation/2019/03/19/study-dc-has-had-highest-intensity-gentrification-any-us-city/> (accessed March 23, 2021).

<sup>51</sup> Metropolitan Police Department, Stop Data Report, (Washington, DC: Metropolitan Police Department, February 2020), <https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/Stop%20Data%20Report.pdf> (accessed March 23, 2021).

<sup>52</sup> Metropolitan Police Department to Charles Allen, March 2, 2020, <https://dccouncil.us/wp-content/uploads/2020/03/IPS-Performance-Oversight-Responses-2020-MPD.pdf> (accessed March 23, 2021).

<sup>53</sup> Elliot C. Williams, “Nadeau announces police accountability bill after Bowser moves \$43 million to cover overtime costs,” *DCist*, November 6, 2020, <https://dcist.com/story/20/11/06/dc-council-brianne-nadeau-police-mpd-overtime-spending-accountability-bill/> (accessed March 24, 2021).

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## Section I

<sup>54</sup>Barry Friedman, “Disaggregating the Police Function” (March 30, 2020). *U. Pa. L. Rev.* (2020-21 Forthcoming), NYU Law and Economics Research Paper No. 20-03, NYU School of Law, Public Law Research Paper No. 20-3, <https://ssrn.com/abstract=3564469> (accessed March 11, 2021).

<sup>55</sup> Wendy Sawyer, “Ten key facts about policing: Highlights from our work,” *Prison Policy Initiatives*, June 5, 2020, <https://www.prisonpolicy.org/blog/2020/06/05/policingfacts/> (accessed February 26, 2021).

<sup>56</sup> This is also key to improving MPD interactions with victims of crime; untrained officers may retraumatize victims, and the fear of police skepticism and maltreatment lead to underreporting of sexual assault in particular. Karen Rich and Patrick Seffrin. “Police interviews of sexual assault reporters: Do attitudes matter?.” *Violence and Victims* 27, no. 2 (2012): 263-279, <https://www.oaesv.org/site/assets/files/1321/police-interviews-of-sexual-assault-reports.pdf> (accessed March 11, 2021).

<sup>57</sup> Black DC residents account for 86% of single adults and 97% of family households experiencing homelessness. Government of the District of Columbia, *Looking Back to Move Forward: Progress and Lessons Learned During the First Four Years of Homeward DC* (Washington, DC: September 2019), [https://ich.dc.gov/sites/default/files/dc/sites/ich/page\\_content/attachments/Homeward%20DC%20Progress%20Report\\_Final.pdf](https://ich.dc.gov/sites/default/files/dc/sites/ich/page_content/attachments/Homeward%20DC%20Progress%20Report_Final.pdf) (accessed February 26, 2021). Of 6,380 people experiencing homelessness during the 2020 point-in-time count, 652 were unsheltered, meaning that they were living on the streets, in encampments, parks, or other public areas. This is an increase from the 2019 count. This number has doubled since 2016. This is, in part, due to DC’s insufficient provision of emergency and transitional housing and unlivable conditions in the shelters that do exist. Avi Bajpai, “Annual survey reveals a continued decrease in family homelessness, no change for youth, and an increase for single individuals,” *Street Sense Media*, June 21, 2020, <https://www.streetsensemedia.org/article/2020-homeless-data-on-dc-shows-mixed-successes/#.YDcwaKpKhdh> (accessed February 26, 2021); Metropolitan Washington Council of Governments, *Homelessness In Metropolitan Washington: Results and Analysis from the Annual Point-in-Time (PIT) Count of Persons Experiencing Homelessness* (Washington, DC: Metropolitan Washington Council of Governments, June 2020), <https://www.mwcog.org/file.aspx?D=VhQ%2bN3a3f9SwIuD5HUlcTubx60XB9%2fCCYa%2fe2a1tXfY%3d&A=e4vI6kl7inBrEIL%2fp3YmQX0n1j%2bcfnm2DOc398G3mvA%3d> (accessed February 26, 2021); National Alliance on Mental Illness, *Identity and Culture Dimensions: Black/African American*, <https://nami.org/Your-Journey/Identity-and-Cultural-Dimensions/Black-African-American>; <https://www.brookings.edu/research/innovative-solutions-to-address-the-mental-health-crisis-shifting-away-from-police-as-first-responders/> (accessed February 26, 2021).

<sup>58</sup> Metropolitan Washington Council of Governments, *Homelessness In Metropolitan Washington: Results and Analysis from the Annual Point-in-Time (PIT) Count of Persons Experiencing Homelessness*, (Washington, DC: Metropolitan Washington Council of Governments, June 2020), <https://www.mwcog.org/file.aspx?D=VhQ%2bN3a3f9SwIuD5HUlcTubx60XB9%2fCCYa%2fe2a1tXfY%3d&A=e4vI6kl7inBrEIL%2fp3YmQX0n1j%2bcfnm2DOc398G3mvA%3d> (accessed February 26, 2021).

<sup>59</sup> National Alliance on Mental Illness, *Jailing People with Mental Illness*, <https://www.nami.org/Advocacy/Policy-Priorities/Divert-from-Justice-Involvement/Jailing-People-with-Mental-Illness> (accessed February 26, 2021).

<sup>60</sup> Emma Frankham, “Mental illness affects police fatal shootings,” *Contexts: Sociology for the Public*, 19 no. 4 (July 2018), <https://www.treatmentadvocacycenter.org/storage/documents/overlooked-in-the-undercounted.pdf>; <https://contexts.org/articles/mental-illness-affects-police-fatal-shootings/>.

<sup>61</sup> Disability Community and Policing Working Group as convened by the DC Developmental Disabilities Council, *Recommendations to Support DC’s Disability Community* (Washington, DC: 2020)

<sup>62</sup> Eric Flack and Jordan Fischer, “DMV police are called on tens of thousands of mental health runs a year. Most don't get any training on how to handle it,” WUSA9, November 12, 2020, <https://www.wusa9.com/article/news/911-mentally-ill-crisis-intervention-training-police-mental-health-dc-police-secret-service-metro-transit-police-fairfax-montgomery/65-3270ab6a-e15c-4ecb-9605-de5490668ca2> (accessed February 26, 2021).

<sup>63</sup> “None of us should make any recommendations or changes without being informed by the real-life experiences of the people most affected by this problem.” Disability Community and Policing Working Group as convened by the DC Developmental Disabilities Council, *Recommendations to Support DC’s*

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<sup>64</sup> Safer, Stronger DC, *Bowser Administration Progress on NEAR Act Implementation*, <https://saferstronger.dc.gov/page/near-act-safer-stronger-dc> (accessed March 7, 2021).

<sup>65</sup> Executive Office of the Mayor, Department of Behavioral Health, Metropolitan Police Department, Department of Human Services, *Pre-Arrest Diversion: Connecting Police Community Contacts with District Services. Overview of the 2018 Pilot Period* (Washington, DC: 2019), [https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/FINAL\\_Pre-arrest%20Diversion%20Program%202018%20Report\\_April%202019.pdf](https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/FINAL_Pre-arrest%20Diversion%20Program%202018%20Report_April%202019.pdf) (accessed March 7, 2021).

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<sup>67</sup> Chief of Staff, DBH, meeting with the DC Police Reform Commission, March 6, 2021.

<sup>68</sup> Amos Irwin and Betsy Pearl, *The Community Responder Model: How Cities Can Send the Right Responder to Every 911 Call* (Washington, DC: Center for American Progress, 2020), <https://www.americanprogress.org/issues/criminal-justice/reports/2020/10/28/492492/community-responder-model/> (accessed March 5, 2021).

<sup>69</sup> “To be most effective the CRT must be a *real-time resource* for CIOs when they are dealing with difficult situations.” Police Complaints Board: Office of Police Complaints, *PCB Policy Report #19-2: Updates for the Crisis Intervention Officers Program* (Washington, DC: PCB, 2020),

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<sup>70</sup> Shawn Jegede, meeting of the Anacostia Coordinating Council. January 8, 2021.

<sup>71</sup> Police Complaints Board: Office of Police Complaints, *PCB Policy Report #19-2: Updates for the Crisis Intervention Officers Program* (Washington, DC: PCB, 2020),

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<sup>78</sup> Eric Falquero, “What can happen when the police are asked to respond to a mental health crisis in DC?” *Street Sense Media*, July 20, 2020, <https://www.streetsensemedia.org/article/dc-budget-arrest-behavioral-diversion/#.YEXQXapKjLZ> (accessed March 8, 2021).

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<sup>80</sup> District of Columbia Auditor, *Improving Mental Health Services and Outcomes for All: The DC Department of Behavioral Health and the Justice System* (Washington, DC: ODCA, 2018), [http://www.courtexcellence.org/uploads/publications/ODCA\\_Report\\_Audit\\_of\\_DBH\\_2.pdf](http://www.courtexcellence.org/uploads/publications/ODCA_Report_Audit_of_DBH_2.pdf) (accessed March 8, 2021).

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<sup>83</sup> Council for Court Excellence, *Everything is Scattered... The Intersection of Substance Use Disorders and Incarcerations in the District* (Washington, DC: CCE, 2020), [http://www.courtexcellence.org/uploads/File/SUD\\_Report\\_8\\_25\\_20.pdf](http://www.courtexcellence.org/uploads/File/SUD_Report_8_25_20.pdf) (accessed March 8, 2021).

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<sup>92</sup> Phyllis Jones, meeting with the DC Police Reform Commission, February 25, 2021.

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<sup>93</sup> Community Connections, meeting with the DC Police Reform Commission, January 20, 2021.

<sup>94</sup> Jaline Gilliam, meeting with the DC Police Reform Commission, January 14, 2021; Eric Falquero, “What can happen when the police are asked to respond to a mental health crisis in DC?” *Street Sense Media*, July 20, 2020, <https://www.streetsensemedia.org/article/dc-budget-arrest-behavioral-diversion/#.YEXQXapKjLZ> (accessed March 8, 2021).

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<sup>101</sup> Community Connections, meeting with the DC Police Reform Commission, January 20, 2021.

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<sup>103</sup> District of Columbia Auditor, *Improving Mental Health Services and Outcomes for All: The DC Department of Behavioral Health and the Justice System* (Washington, DC: ODCA, 2018), [http://www.courtexcellence.org/uploads/publications/ODCA\\_Report\\_Audit\\_of\\_DBH\\_2.pdf](http://www.courtexcellence.org/uploads/publications/ODCA_Report_Audit_of_DBH_2.pdf) (accessed March 8, 2021).

<sup>104</sup> Phyllis Jones, meeting with the DC Police Reform Commission, January 28, 2021.

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<sup>106</sup> Treatment Advocacy Center, *District of Columbia Report Card*, September 17, 2018, <https://www.treatmentadvocacycenter.org/grading-the-states/district-of-columbia> (accessed February 22, 2021).

<sup>107</sup> When the CIO training program began, the DC chapter of the National Alliance on Mental Illness participated in developing and delivering training. The Commission encourages DBH to reestablish this collaboration. Disability Community and Policing Working Group as convened by the DC Developmental Disabilities Council, *Recommendations to Support DC's Disability Community* (2020).

<sup>108</sup> Council for Court Excellence, *Jails and Justice: Our Transformation Starts Today, Summary of Phase II Recommendations* (Washington, DC: Council for Court Excellence, 2021), [www.courtexcellence.org/uploads/publications/Summary\\_of\\_Phase\\_II\\_Recommendations.pdf](http://www.courtexcellence.org/uploads/publications/Summary_of_Phase_II_Recommendations.pdf) (accessed February 26, 2021).

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<sup>111</sup> Police Complaints Board: Office of Police Complaints, *PCB Policy Report #19-2: Updates for the Crisis Intervention Officers Program* (Washington, DC: PCB, 2020),

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<sup>114</sup> Jaline Gilliam, Pathways to Housing, meeting with the DC Police Reform Commission, January 14, 2021.

<sup>115</sup> Sarah J. Aristil, Noah E. Duncan, and Melissa J. Hopkins, “Care, Not Incarceration: A Quantitative Approach to How Data Analysis May Help Reduce the Arrest Rate of People in Crisis,” *The George Washington University Law School, Data Science, Law & Policy* (Fall 2020), [https://static1.squarespace.com/static/5edff6436067991288014c4c/t/5fdb6e44e002484d4b9c0c72/1608216133097/Final+Familiar+Faces+Report\\_GW+Law.pdf](https://static1.squarespace.com/static/5edff6436067991288014c4c/t/5fdb6e44e002484d4b9c0c72/1608216133097/Final+Familiar+Faces+Report_GW+Law.pdf).

<sup>116</sup> DC Department of Human Services, *Pre-Arrest Diversion Pilot Program* (Washington, DC: Department of Human Services) [https://dhs.dc.gov/sites/default/files/dc/sites/dhs/page\\_content/attachments/DC%20Pre-Arrest%20Divers%20Pilot%20Program\\_Updated%20v3.pdf](https://dhs.dc.gov/sites/default/files/dc/sites/dhs/page_content/attachments/DC%20Pre-Arrest%20Divers%20Pilot%20Program_Updated%20v3.pdf) (accessed February 26, 2021).

<sup>117</sup> Metropolitan Police Department, *MPD GO—PCA-502.04 (Pre-Arrest Diversion Pilot Program), Effective April 24, 2018*, [https://go.mpdconline.com/GO/GO\\_502\\_04.pdf](https://go.mpdconline.com/GO/GO_502_04.pdf) (accessed March 7, 2021).

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<sup>119</sup> Michelle Garcia, meeting with the DC Police Reform Commission, December 7, 2020.

<sup>120</sup> Rachel E. Morgan, Ph.D., and Barbara A. Oudekerk, Ph.D., Bureau of Justice Statistics statisticians, *Criminal Victimization 2018*, (U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, September 2019), NCJ 253043. <https://www.bjs.gov/content/pub/pdf/cv18.pdf>.

<sup>121</sup> National Domestic Violence Hotline, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses*, (Washington, DC: National Domestic Violence Hotline, 2015).

<sup>122</sup> Natalia Otero and Elizabeth Olds, co-founders of DC Safe, meeting with Commissioners, February 5, 2021.

<sup>123</sup> Certain forms of immigration relief for victims of domestic violence and other abusive crimes require at the very least reporting the crime to law enforcement, and some require active cooperation with police and prosecutors. For more information, see American Immigration Council, *Violence Against Women Act (VAWA) Provides Protections for Immigrant Women and Victims of Crime* (Washington, DC: American Immigration Council, 2019) [https://www.americanimmigrationcouncil.org/research/violence-against-women-act-vawa-immigration#:~:text=The%20Violence%20Against%20Women%20Act%20\(VAWA\)%20of%201994%20included%20provisions,2000%20created%20new%20forms%20of.](https://www.americanimmigrationcouncil.org/research/violence-against-women-act-vawa-immigration#:~:text=The%20Violence%20Against%20Women%20Act%20(VAWA)%20of%201994%20included%20provisions,2000%20created%20new%20forms%20of.)

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<sup>125</sup> Georgetown Professor Deborah Epstein, meeting with the DC Police Reform Commission, January 4, 2021.

<sup>126</sup> In other situations, the responding officer will call DC Safe so that the survivor can speak directly with an advocate or alert DC Safe so that an advocate can follow-up within a day or two.

<sup>127</sup> Natalia Otero and Elizabeth Olds, co-founders of DC Safe, meeting with Commissioners on February 5, 2021.

<sup>128</sup> *Id.*

<sup>129</sup> Susan J. Hoppe, Yan Zhang, Brittany E. Hayes, and Matthew A. Bills, “Mandatory arrest for domestic violence and repeat offending: A meta-analysis,” *Aggression and Violent Behavior* 53 (2020) 101430.

<sup>130</sup> Radha Iyengar, “Does the certainty of arrest reduce domestic violence? Evidence from mandatory and recommended arrest laws,” *Journal of Public Economics* 93 (2009) 85-98. The study examines FBI supplementary homicide reports from 1976-2003, encompassing the periods before and after mandatory arrest laws became common.

<sup>131</sup> Susan J. Hoppe, Yan Zhang, Brittany E. Hayes, and Matthew A. Bills, “Mandatory arrest for domestic violence and repeat offending: A meta-analysis,” *Aggression and Violent Behavior* 53 (2020) 101430.

<sup>132</sup> Information provided by Yasmin Vafa, executive director, and Rebecca Burney, attorney and youth advocacy coordinator, of Rights4Girls during ad hoc meeting with Commissioners, January 12, 2021. Note: While most trafficked youth in DC are American-born, those who are undocumented are vulnerable to threats of deportation.

<sup>133</sup> Data collected by Courtney’s House and provided by Courtney’s House co-founder and director Tina Frundt.

<sup>134</sup> Conversation with Anna Sineva, legal affairs director for Church of Scientology National Affairs Office, January 29, 2021.

<sup>135</sup> In a sample of 100 women in the sex trade, 42% met the criteria for PTSD. Information provided by Yasmin Vafa, executive director, and Rebecca Burney, attorney and youth advocacy coordinator, of Rights4Girls during ad hoc meeting with Commissioners, January 12, 2021.

<sup>136</sup> While DC has no aggregate data about the race of those who purchase sex, trafficking survivors in DC say the majority of their buyers are white men. Research in other jurisdictions confirms this trend. *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Data collected by Courtney’s House and provided by Courtney’s House co-founder and director Tina Frundt.

<sup>139</sup> Conversation with Anna Sineva, legal affairs director for Church of Scientology National Affairs Office, January 29, 2021.

<sup>140</sup> “The Metropolitan Police Department shall refer any child suspected of engaging in or offering to engage in a sexual act or sexual contact in return for receiving anything of value to an organization that provides treatment, housing, or services appropriate for victims of sex trafficking of children under 22-1834.” DC Code Sec. 22-2701(d)(2), <https://code.dccouncil.us/dc/council/code/sections/22-2701.html>

<sup>141</sup> Data collected by MPD and provided to the Commission on March 7, 2021.

<sup>142</sup> DC Law 20-276. Sex Trafficking of Children Prevention Amendment Act of 2014, <https://code.dccouncil.us/dc/council/laws/20-276.html>.

<sup>143</sup> Tina Frundt, meeting of the Commission, January 25, 2021.

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<sup>144</sup> After the Pennsylvania legislature bifurcated its statute, researchers found that 70 percent of arrests were for selling and just 30% for buying. Information provided by Yasmin Vafa, executive director, and Rebecca Burney, attorney and youth advocacy coordinator, of Rights4Girls, ad hoc meeting with Commissioners, January 12, 2021.

<sup>145</sup> Sean Bland and Benjamin Brooks, *Improving Laws and Policies to Protect Sex Workers and Promote Health and Wellbeing: A Report on Criminalization of Sex Work in the District of Columbia*, (Whitman-Walker Institute, O'Neill Institute for National and Global Health Law, HIPS, 2020), [bit.ly/DCSexWorkReforms](http://bit.ly/DCSexWorkReforms).

<sup>146</sup> Yasmin Vafa, executive director, and Rebecca Burney, attorney and youth advocacy coordinator, of Rights4Girls, ad hoc meeting with Commissioners, January 12, 2021.

<sup>147</sup> Rachael Gass, meeting with the DC Police Reform Commission, December 10, 2020.

<sup>148</sup> Councilmember Charles Allen reflected this understanding at the December 17, 2020 Judiciary Committee Roundtable on Exploring Non-Law Enforcement Alternatives to Meeting Community Needs: “When a resident calls 911, OUC has two options: dispatch police or dispatch Fire/EMS.”

<sup>149</sup> “Right Care, Right Now” launched on April 19, 2018, and has a goal of improving patients’ health outcomes and preserving FEMS’ resources for those patients with life-threatening injuries and illnesses. Under this program, “callers to 911 with non-emergency injuries or illnesses are transferred to a nurse, either by the 911 center or by a FEMS first responder. The nurse asks the caller questions and assesses his or her symptoms so that the nurse can refer the caller to the most appropriate non-emergency medical care available, most likely a community clinic or urgent care clinic in the caller’s neighborhood.” Currently, the program is centered on physical medical calls, and not mental health-related calls. <https://fems.dc.gov/release/mayor-bowser-launches-right-care-right-now-initiative>; The Police Complaints Board also recommended this expansion. Police Complaints Board: Office of Police Complaints, *PCB Policy Report #19-2: Updates for the Crisis Intervention Officers Program* (Washington, DC: PCB, 2020),

[https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Updates CIO.FINAL\\_.pdf](https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Updates%20CIO.FINAL_.pdf) (accessed February 26, 2021).

<sup>150</sup> Jean Harris, meeting with the DC Police Reform Commission, January 8, 2021.

<sup>151</sup> Police Complaints Board: Office of Police Complaints, *PCB Policy Report #19-2: Updates for the Crisis Intervention Officers Program* (Washington, DC: PCB, 2020),

[https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Updates CIO.FINAL\\_.pdf](https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Updates%20CIO.FINAL_.pdf) (accessed February 26, 2021); Brandon Spreckels, testimony before the DC Council, December 17, 2020; Jackson Beck, testimony before the DC Council, December 17, 2020; Amy C. Watson and Anjali J. Fulambarker, “The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners,” *Best Practices In Mental Health* 8 no. 2 (December 2012): 71, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3769782/>; Michael T. Compton, et al., “System- and Policy-Level Challenges to Full Implementation of the Crisis Intervention Team (CIT) Model,” *Journal Of Police Crisis Negotiations: An International Journal* 10 no. 1-2 (January 2010): 72-85, doi:10.1080/15332581003757347.

## **Section II**

<sup>152</sup> See Section III, Recommendation 2.

<sup>153</sup> See Section I, Recommendation 4.

<sup>154</sup> Sarah J. Aristil, Noah E. Duncan, and Melissa J. Hopkins, *Care, Not Incarceration: A Quantitative Approach to How Data Analysis May Help Reduce the Arrest Rate of People in Crisis* (Washington, DC: The George Washington University Law School, 2020) <http://bit.ly/familiarfaces>.

<sup>155</sup> Monica Deza, Johanna Catherine Maclean, and Keisha T. Solomon, *Local Access to Mental Healthcare and Crime* (Cambridge: National Bureau of Economic Research, 2020), 21, [https://www.nber.org/system/files/working\\_papers/w27619/w27619.pdf](https://www.nber.org/system/files/working_papers/w27619/w27619.pdf) (accessed March 4, 2021); Hefei Wen, Jason M. Hockenberry, and Janet R. Cummings, “The effect of Medicaid expansion on crime reduction: Evidence from HIFA-waiver expansions,” *Journal of Public Economics* 154 (October 2017): 67-94, <https://doi.org/10.1016/j.jpubeco.2017.09.001>; Samuel R. Bondurant, Jason M. Lindo, and Isaac D. Swensen, *Substance Abuse*

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*Treatment Centers and Local Crime* (Cambridge: National Bureau of Economic Research, 2016), 3-4, [https://www.nber.org/system/files/working\\_papers/w22610/w22610.pdf](https://www.nber.org/system/files/working_papers/w22610/w22610.pdf) (accessed March 4, 2021); Bazelon Center for Mental Health Law, *Diversion to What? Evidence-Based Mental Health Services That Prevent Needless Incarceration* (Washington, DC: Bazelon Center, 2019), 2, <http://www.bazelon.org/wp-content/uploads/2019/09/Bazelon-Diversion-to-What-Essential-Services-Publication-September-2019.pdf> (accessed March 4, 2021); Mental Health America, *Access to Mental Health Care And Incarceration* (Alexandria: Mental Health America, 2021), <https://www.mhanational.org/issues/access-mental-health-care-and-incarceration> (accessed March 4, 2021); NIDA, “Is drug addiction treatment worth its cost?” National Institute on Drug Abuse, June 3, 2020, (National Institute on Drug Abuse, 2020), <https://www.drugabuse.gov/publications/principles-drug-addiction-treatment-research-based-guide-third-edition/frequently-asked-questions/drug-addiction-treatment-worth-its-cost> (accessed March 4, 2021); Jangho Yoon and Jeff Luck, “Intersystem return on investment in public mental health: Positive externality of public mental health expenditure for the jail system in the US,” *Social Science and Medicine* 170 (December 2016): 133-142, <https://doi.org/10.1016/j.socscimed.2016.10.015>; Michael L. Prendergast, Deborah Podus, Eunice Chang, and Darren Urada, “The effectiveness of drug abuse treatment: a meta-analysis of comparison group studies,” *Drug and Alcohol Dependence* 67, no. 1 (June 2002): 53-72, [https://doi.org/10.1016/S0376-8716\(02\)00014-5](https://doi.org/10.1016/S0376-8716(02)00014-5).

<sup>156</sup> Government of the District of Columbia, *Fiscal Year 2021 Approved Budget and Financial Plan: Volume 2: Agency Budget Chapters - Part I* (Washington, DC: Government of the District of Columbia, 2020), C-137, <https://app.box.com/s/d01ut3gjuvcki7ssbct3v67dhppei4p> (accessed March 4, 2021); Government of the District of Columbia, *Fiscal Year 2021 Approved Budget and Financial Plan: Volume 4: Agency Budget Chapters - Part III* (Washington, DC: Government of the District of Columbia, 2020), E-29, <https://app.box.com/s/4f3epemwcd2073r910mcchqdkb47gmze> (accessed March 4, 2021).

<sup>157</sup> District Task Force on Jails & Justice, *Jails & Justice: Our Transformation Starts Today* (Washington, DC: District Task Force on Jails & Justice, 2020), <http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf> (accessed March 11, 2021); Defund MPD Coalition, “Defund MPD Demands Brief” (unpublished document, February 24, 2021).

<sup>158</sup> “Evidence-Based Practice: Home,” Duke University Medical Center Library and Archives, <https://guides.mclibrary.duke.edu/ebm> (accessed March 5, 2021), citing D. L. Sackett, W. M. Rosenberg, J. A. Gray, R. B. Haynes, and W. S. Richardson, “Evidence based medicine: what it is and what it isn’t,” *BMJ* 312: (January 1996): 71, <https://doi.org/10.1136/bmj.312.7023.71>.

<sup>159</sup> “Evidence-Based Practice Resource Center,” SAMHSA, <https://www.samhsa.gov/resource-search/ebp> (accessed March 5, 2021).

<sup>160</sup> Gayle Y. Iwamasa, Kristen H. Sorocco, and Danel A. Koonce, “Ethnicity and clinical psychology: A content analysis of the literature,” *Clinical Psychology Review* 22, no. 6 (July 2002): 931-944, [https://doi.org/10.1016/S0272-7358\(02\)00147-2](https://doi.org/10.1016/S0272-7358(02)00147-2).

<sup>161</sup> “Identity and Cultural Dimensions,” National Alliance on Mental Illness, <https://www.nami.org/Your-Journey/Identity-and-Cultural-Dimensions> (accessed March 5, 2021).

<sup>162</sup> *Id.*

<sup>163</sup> District Task Force on Jails & Justice, *Jails & Justice: Our Transformation Starts Today* (Washington, DC: District Task Force on Jails & Justice, 2021), <http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf> (accessed March 11, 2021); DC Children’s Law Center, et al. to Mayor Bowser and DC Council, “Children and Families in the District Need Access to Behavioral Health Services,” petition, February 2021, [https://www.change.org/p/mayor-bowser-children-and-families-in-the-district-need-access-to-behavioral-health-services?utm\\_source=share\\_petition&utm\\_medium=custom\\_url&recruited\\_by\\_id=bc7bc000-af07-11ea-82e2-79a9b8f4dd19](https://www.change.org/p/mayor-bowser-children-and-families-in-the-district-need-access-to-behavioral-health-services?utm_source=share_petition&utm_medium=custom_url&recruited_by_id=bc7bc000-af07-11ea-82e2-79a9b8f4dd19) (accessed March 5, 2021).

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<sup>165</sup> DBH 340.6 (Provision of Assertive Community Treatment to Adult MHRS Consumers), § 5a, Effective May 8, 2014, [https://dbh.dc.gov/sites/default/files/dc/sites/dmh/publication/attachments/340.6%20TL-248\\_0.PDF](https://dbh.dc.gov/sites/default/files/dc/sites/dmh/publication/attachments/340.6%20TL-248_0.PDF) (accessed March 5, 2021).

<sup>166</sup> “Behavioral Health,” Community Connections, <http://www.communityconnectionsdc.org/our-services/behavioral-health> (accessed March 5, 2021); “What We Do: Housing First Teams,” Pathways to Housing DC, <https://pathwaystohousingdc.org/what-we-do/housing-first/> (accessed March 5, 2021); “Program & Services,” Hillcrest Children & Family Center, <http://hillcrest-dc.org/services/> (accessed March 5, 2021); “Assertive Community Treatment,” MBI Health Services, LLC, <http://www.mbihs.com/what-we-offer/assertive-community-treatment-%28act%29> (accessed March 5, 2021); “Our Services,” Family Preservation Services, LLC, <https://www.familypreservationdc.com/our-services/> (accessed March 5, 2021); “ACT

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<sup>169</sup> Council for Court Excellence, *Everything is Scattered... The Intersection of Substance Use Disorders and Incarcerations in the District*, (Washington, DC: Council for Court Excellence, August 25, 2020), <https://dcauditor.org/report/everything-is-scattered-the-intersection-of-substance-use-disorders-and-incarcerations-in-the-district/> (accessed March 5, 2021).

<sup>170</sup> Police Complaints Board: Office of Police Complaints, *PCB Policy Report #19-2: Updates for the Crisis Intervention Officers Program* (Washington, DC: Government of the District of Columbia, 2020), [https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Updates\\_CIO\\_FINAL\\_.pdf](https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Updates_CIO_FINAL_.pdf) (accessed February 26, 2021)

<sup>171</sup> *Id.*

<sup>172</sup> The Diagnostic and Statistical Manual of Mental Disorders (DSM-V) defines substance use disorder (SUD) as “a problematic pattern of use of alcohol or another substance causing clinically significant impairment in daily life or noticeable distress.” According to the DSM-5, a substance use disorder can result from the use of any of 10 separate classes of drugs: alcohol, caffeine, cannabis, hallucinogens, inhalants, opioids, sedatives, hypnotics, stimulants, and tobacco. See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition* (Washington, DC: American Psychiatric Publishing, 2013).

<sup>173</sup> Substance Abuse and Mental Health Services Administration, *Behavioral Health Barometer: District of Columbia, Volume 6: Indicators as measured through the 2019 National Survey on Drug Use and Health and the National Survey of Substance Abuse Treatment Services* (Rockville: SAMHSA, 2020), 26, [https://www.samhsa.gov/data/sites/default/files/reports/rpt32825/DC-BH-Barometer\\_Volume6.pdf](https://www.samhsa.gov/data/sites/default/files/reports/rpt32825/DC-BH-Barometer_Volume6.pdf) (accessed March 8, 2021).

<sup>174</sup> Government of the District of Columbia Office of the Chief Medical Examiner, *Opioid-related Fatal Overdoses: January 1, 2016 to October 31, 2020* (Washington, DC: Office of the Chief Medical Examiner, 2021), 1, [https://ocme.dc.gov/sites/default/files/dc/sites/ocme/agency\\_content/Opioid%20related%20Overdoses%20Deaths%201.13.21.pdf](https://ocme.dc.gov/sites/default/files/dc/sites/ocme/agency_content/Opioid%20related%20Overdoses%20Deaths%201.13.21.pdf) (accessed March 8, 2021); Centers for Disease Control and Prevention, “Overdose Deaths Accelerating During COVID-19,” press release, December 17, 2020, <https://www.cdc.gov/media/releases/2020/p1218-overdose-deaths-covid-19.html> (accessed March 8, 2021).

<sup>175</sup> Government of the District of Columbia Office of the Chief Medical Examiner, *Opioid-related Fatal Overdoses: January 1, 2016 to October 31, 2020*, (Washington, DC: Office of the Chief Medical Examiner, 2021), 3.

<sup>176</sup> *Id.*, 4.

<sup>177</sup> NIDA, “Washington DC: Opioid-Involved Deaths and Related Harms,” National Institute on Drug Abuse, April 3, 2020, <https://www.drugabuse.gov/drug-topics/opioids/opioid-summaries-by-state/washington-dc-opioid-involved-deaths-related-harms> (accessed March 8, 2021).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

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<sup>180</sup> Council for Court Excellence, *Everything is Scattered... The Intersection of Substance Use Disorders and Incarcerations in the District* (Washington, DC: Council for Court Excellence, 2020), front matter, [http://www.courtexcellence.org/uploads/File/SUD\\_Report\\_8\\_25\\_20.pdf](http://www.courtexcellence.org/uploads/File/SUD_Report_8_25_20.pdf) (accessed March 9, 2021).

<sup>181</sup> Matt Blitz, “DC Is Doubling Availability of Free Naloxone Due to Increase in Opioid-Related Deaths,” *DCist*, August 31, 2020, <https://dcist.com/story/20/08/31/dc-narcan-naloxone-pharmacy-free-opioid-deaths/> (accessed March 9, 2021).

<sup>182</sup> SAMHSA, “Medication-Assisted Treatment (MAT),” SAMHSA, January 4, 2021, <https://www.samhsa.gov/medication-assisted-treatment> (accessed March 9, 2021).

<sup>183</sup> Council for Court Excellence, *Everything is Scattered... The Intersection of Substance Use Disorders and Incarcerations in the District*, 108.

<sup>184</sup> The Council for Court Excellence details concrete steps that Council, the Executive Office of the Mayor, and DBH’s Strategic Management and Policy Division and Data and Performance Management Branch can take to ensure sufficient SUD service delivery. *Id.*, 109.

<sup>185</sup> *Id.*, 13.

<sup>186</sup> *Id.*, 60.

<sup>187</sup> *Id.*, 60. To review CCE’s discussion of its findings regarding these recommendations in full, see 60-77.

<sup>188</sup> *Id.*, 48.

<sup>189</sup> *Id.*, 51.

<sup>190</sup> “For context, there were 27,000 adults in DC from 2017 to 2018 who had an illicit drug use disorder in the past year.” *Id.*, 15.

<sup>191</sup> Jonaki Bose, et al., *Key Substance Use and Mental Health Indicators in the United States: Results from the 2017 National Survey on Drug Use and Health* (Rockville: HHS, 2018), A-44, <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHFFR2017/NSDUHFFR2017.pdf> (accessed March 9, 2021).

<sup>192</sup> Bertha K. Madras, et al., *Improving Access to Evidence-Based Medical Treatment for Opioid Use Disorder: Strategies to Address Key Barriers within the Treatment System* (Washington, DC: NAM, 2020), 17-18, [https://www.opioidlibrary.org/wp-content/uploads/2020/06/Improving-Access-to-Evidence-Based-Medical-Treatment-for-OUD\\_FINAL.pdf](https://www.opioidlibrary.org/wp-content/uploads/2020/06/Improving-Access-to-Evidence-Based-Medical-Treatment-for-OUD_FINAL.pdf) (accessed March 9, 2021).

<sup>193</sup> Council for Court Excellence, 5, 22.

<sup>194</sup> U.S. Department of Health & Human Services, *Facing Addiction in America: The Surgeon General’s Report on Alcohol, Drugs, and Health* (Washington, DC: HHS, November 2016), 4-3, <https://store.samhsa.gov/product/Facing-Addiction-in-America-The-Surgeon-General-s-Report-on-Alcohol-Drugs-and-Health-Full-Report/SMA16-4991> (accessed March 9, 2021).

<sup>195</sup> Council for Court Excellence, *Everything is Scattered... The Intersection of Substance Use Disorders and Incarcerations in the District*, 81-83.

<sup>196</sup> *Id.*, 83.

<sup>197</sup> *Id.*, 79.

<sup>198</sup> *Id.*, 82, quoting SAMHSA, *Substance Abuse Treatment For Persons With Co-Occurring Disorders A Treatment Improvement Protocol* (Rockville: SAMHSA, 2013): 11-12.

<sup>199</sup> *Id.*, 81-82.

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<sup>200</sup> Id., 78.

<sup>201</sup> Id.

<sup>202</sup> Id.

<sup>203</sup> The Council for Court Excellence found that when people in the District were assessed and needed but did not receive SUD care within 90 days, they were 24% more likely to be arrested or incarcerated and 18.55% more likely to die of an overdose within that 90-day period, compared to people who did receive care. Id., 79.

<sup>204</sup> Interagency Council on Behavioral Health Establishment Amendment Act of 2021, B24-0065 § 2(b) (2021).

<sup>205</sup> Council for Court Excellence, 116.

<sup>206</sup> Id., 125.

<sup>207</sup> Id., 116.

<sup>208</sup> Id. Additionally, Dr. Edwin Chapman told the Commission that a lack of permanent housing for clients who have been stabilized and discharged perpetuates the cycle of crisis. Dr. Edwin Chapman, meeting with the DC Police Reform Commission, February 5, 2021.

<sup>209</sup> “Housing Justice Priorities and Impact Studies,” DC Grassroots Planning Coalition <http://www.dcgrassrootsplanning.org/priorities/> (accessed February 26, 2021).

<sup>210</sup> “District of Columbia,” National Low Income Housing Coalition, 2021 <https://nlihc.org/housing-needs-by-state/district-columbia> (accessed March 29, 2021).

<sup>211</sup> The Community Partnership, *Point in Time Count 2020*, (The Community Partnership, June 10, 2020), <https://community-partnership.org/wp-content/uploads/2020/07/PointinTime2020.pdf> (accessed February 22, 2021).

<sup>212</sup> American Psychological Association, *Health and Homelessness*, (American Psychological Association, 2011), <https://www.apa.org/pi/ses/resources/publications/homelessness-health> (accessed February 22, 2021).

<sup>213</sup> Douglas Polcin, “Co-occurring Substance Abuse And Mental Health Problems Among Homeless Persons: Suggestions For Research And Practice,” *Journal of Social Distress and the Homeless* 25 no.1: 1-10, doi: 10.1179/1573658X15Y.0000000004, (accessed March 3, 2021).

<sup>214</sup> Dr. Edwin Chapman, testimony to the Commission, February 5, 2021.

<sup>215</sup> Id.

<sup>216</sup> DC Safe, testimony provided to the Commission, February 5, 2021.

<sup>217</sup> Testimony provided to the DC Council Judiciary Committee meeting on nonpolice alternatives, December 17, 2021.

<sup>218</sup> Erin Stringfellow, et al., “Substance use among persons with homeless experience in primary care,” *Substance Abuse* vol. 37,4 (2016): 534-541. doi:10.1080/08897077.2016.1145616.

<sup>219</sup> District Task Force on Jails & Justice, *Jails & Justice: Our Transformation Starts Today, 27; Report of the Committee on Community Investments & Alternatives to the Criminal Justice System to the District Task Force on Jails & Justice* (Washington, DC: Committee on Community Investments & Alternatives to the Criminal Justice System, 2020), [http://www.courtexcellence.org/uploads/publications/Community\\_Investments\\_Committee\\_Report\\_to\\_the\\_Task\\_Force.pdf](http://www.courtexcellence.org/uploads/publications/Community_Investments_Committee_Report_to_the_Task_Force.pdf) (accessed March 11, 2021).

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- <sup>220</sup> DDC Grassroots Planning Coalition, “The Comprehensive Plan,” <http://www.dgrassrootsplanning.org/compplan/> (accessed March 8, 2021).
- <sup>221</sup> Deborah Epstein, email to the Commission, January 5, 2021.
- <sup>222</sup> Housing Matters: an Urban Institute initiative, “Stable Housing Can Launch Youth Leaving Foster Care on a Path to Success,” *Urban Institute*, June 19, 2019, <https://housingmatters.urban.org/articles/stable-housing-can-launch-youth-leaving-foster-care-path-success> (accessed March 3, 2021).
- <sup>223</sup> Annie E. Casey Foundation, “From Foster Home to Homeless: Strategies to Prevent Homelessness for Youth Transitioning From Foster Care,” 2014, <https://www.aecf.org/resources/from-foster-home-to-homeless/> (accessed March 4, 2021).
- <sup>224</sup> Zach Tilly, “Bipartisan House Bill will keep Youth Leaving Foster Care from Homelessness,” *Children’s Defense Fund*, September 17, 2019, <https://www.childrensdefense.org/blog/keep-youth-leaving-foster-care-from-homelessness/> (accessed March 4, 2021).
- <sup>225</sup> National Foster Youth Institute, “Sex Trafficking” <https://nfvi.org/issues/sex-trafficking/> (accessed March 14, 2021).
- <sup>226</sup> Stefanie Sprow, “Child Welfare Provisions of the Consolidated Appropriations Act 2021,” *Children’s Defense Fund*, March 4, 2021.
- <sup>227</sup> *Id.*
- <sup>228</sup> *Barnett v. U.S.*, 525 A.2d 197 (1987).
- <sup>229</sup> Gwynette Smith, “Criminality of Being Homeless,” *Street Sense Media*, December 29, 2015, <https://www.streetsensemedia.org/article/criminality-of-being-homeless/#.YEuqpC9h3fY> (accessed March 11, 2021).
- <sup>230</sup> Cortland Milloy, “Panhandlers deserve dignity, not your pity,” *Washington Post*, December 31, 2019, [https://www.washingtonpost.com/local/panhandlers-deserve-dignity-not-your-pity/2019/12/31/932a38a0-2b02-11ea-9b60-817cc18cf173\\_story.html](https://www.washingtonpost.com/local/panhandlers-deserve-dignity-not-your-pity/2019/12/31/932a38a0-2b02-11ea-9b60-817cc18cf173_story.html) (accessed March 11, 2021).
- <sup>231</sup> Esther Ciammachilli, “How do Panhandlers Decide Where To Sit?,” *WAMU*, May 2, 2018, <https://wamu.org/story/18/05/02/panhandlers-decide-sit/> (accessed March 11, 2021).
- <sup>232</sup> District Task Force on Jails & Justice, *Jails & Justice: Our Transformation Starts Today*, 36.
- <sup>233</sup> District of Columbia Criminal Code Reform Commission, *First Draft of Report #47 - Illegal Vending* (Washington, DC: District of Columbia Criminal Code Reform Commission, 2019), <https://ccrc.dc.gov/sites/default/files/dc/sites/ccrc/publication/attachments/First-Draft-of-Report-47.pdf> (accessed March 11, 2021); District of Columbia Criminal Code Reform Commission, *First Draft of Report #56 - Panhandling* (Washington, DC: District of Columbia Criminal Code Reform Commission, 2020), <https://ccrc.dc.gov/sites/default/files/dc/sites/ccrc/publication/attachments/First%20Draft%20of%20Report%2056%20-%20Panhandling.pdf> (accessed March 11, 2021).
- <sup>234</sup> District of Columbia Criminal Code Reform Commission, *First Draft of Report #47 - Illegal Vending*, 3.
- <sup>235</sup> *Id.*, 3-4.
- <sup>236</sup> *Id.*, 6-7.
- <sup>237</sup> *Id.*, 4.
- <sup>238</sup> *Id.*, 5.

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<sup>239</sup> Id., 8.

<sup>240</sup> Street Vending Decriminalization Amendment Act of 2021, B24-0049 (2021).

<sup>241</sup> District of Columbia Criminal Code Reform Commission, *First Draft of Report #56 - Panhandling*, 3.

<sup>242</sup> Id.

<sup>243</sup> Id., 9-10.

<sup>244</sup> Id., 10.

<sup>245</sup> Id., 3.

<sup>246</sup> Barnett v. U.S., 525 A.2d 197 (1987); Commissioner Patrice Sulton, meeting of the DC Police Reform Commission, March 1, 2021.

<sup>247</sup> sujatha baliga, Sia Henry, and Georgia Valentine, "Restorative Community Conferencing: A study of Community Works West's restorative justice youth diversion program in Alameda County," (Impact Justice: 2017), [https://impactjustice.org/wp-content/uploads/CWW\\_RIreport.pdf](https://impactjustice.org/wp-content/uploads/CWW_RIreport.pdf) (accessed February 22, 2021).

<sup>248</sup> District Task Force on Jails & Justice, *Jails & Justice: Our Transformation Starts Today*, 32.

<sup>249</sup> For more information about the mismatch between the criminal legal system and the needs of domestic violence survivors, see Section I, Recommendation 6.

<sup>250</sup> Creative Interventions, *Creative Interventions Toolkit: A Practical Guide to Stop Interpersonal Violence* (2012), <https://www.creative-interventions.org/toolkit/>.

### **Section III**

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<sup>252</sup> Id.

<sup>253</sup> Perry Stein, "DC may give schools more control over security, but major changes appear unlikely," *Washington Post*, June 26, 2020, [https://www.washingtonpost.com/local/education/dc-schools-police-council/2020/06/26/69c01db2-b6db-11ea-a510-55bf26485c93\\_story.html](https://www.washingtonpost.com/local/education/dc-schools-police-council/2020/06/26/69c01db2-b6db-11ea-a510-55bf26485c93_story.html) (accessed February 25, 2021).

<sup>254</sup> Advancement Project, *We Came to Learn: A Call to Action for Police-Free Schools*, (Advancement Project, 2018), <https://advancementproject.org/wp-content/uploads/WCTLweb/index.html#page=1> (accessed February 22, 2021).

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<sup>256</sup> Blaine Stum, "DC Public Schools: Security and Staffing Analysis" (unpublished document, October 2020).

<sup>257</sup> Id.

<sup>258</sup> Id.

<sup>259</sup> Id.

<sup>260</sup> Michelle E. Chen, *Mass Incarceration and Adolescent Development: Connecting Identity and Trauma in Black Adolescent Males*, thesis (Sarah Lawrence College, 2018).

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<sup>261</sup> Dylan B. Jackson et al., “Police Stops and Sleep Behaviors Among At-Risk Youth,” *Sleep Health* 6, no. 4 (August 2020): 435-441. <https://doi.org/10.1016/j.sleh.2020.02.006>.

<sup>262</sup> Id.

<sup>263</sup> Dylan B. Jackson et al., “Police Stops Among At-Risk Youth: Repercussions for Mental Health,” *Journal of Adolescent Health* 65 (2019): 627.

<sup>264</sup> DC Code § 5–132.02. “Establishment of the Metropolitan Police Department School Safety Division; functions of the School Safety Division,” <https://code.dccouncil.us/dc/council/code/sections/5-132.02.html>.

<sup>265</sup> Oakland Unified School District, *The George Floyd District Safety Plan Phase 1* (Oakland, CA: 2020), 26, <https://oaklandside.org/wp-content/uploads/2020/12/20-2147-Board-Memorandum-Resolution-Plan-George-Floyd-District-Safety-Plan-Phase-1-Second-Reading-1292020.pdf>, (accessed March 08, 2021).

<sup>266</sup> Advancement Project and Alliance for Educational Justice, *We Came to Learn*, 31, <https://advancementproject.org/wp-content/uploads/WCTLweb/index.html#page=1> (accessed February 28, 2021).

<sup>267</sup> District of Columbia Public Schools, “DCPS at a Glance: Enrollment,” <https://dcps.dc.gov/page/dcps-glance-enrollment> (accessed March 1, 2021).

<sup>268</sup> Advancement Project and Alliance for Educational Justice, *We Came to Learn*, 32, <https://advancementproject.org/wp-content/uploads/WCTLweb/index.html#page=1> (accessed February 28, 2021).

<sup>269</sup> Metropolitan Police Department, *School Safety and Security in the District of Columbia: SY2019-2020*, (Washington, DC: MPD), 1-2, [https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/MPD%20School%20Safety%20Annual%20Report\\_School%20Year%202019-2020%20Final.pdf](https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/MPD%20School%20Safety%20Annual%20Report_School%20Year%202019-2020%20Final.pdf) (accessed February 28, 2021).

<sup>270</sup> Blaine Stum, “DC Public Schools: Security and Staffing Analysis,” (unpublished document, October 21, 2020).

<sup>271</sup> Id.

<sup>272</sup> DC Code § 4–1501.03.

<sup>273</sup> DC Code § 16–2301.

<sup>274</sup> Larry Hamilton, “District Public Schools to Take Over Security From Police,” *The DC Post*, June 29, 2020, <https://thedcpost.com/washington-dc-schools-security-police/>.

<sup>275</sup> University of Florida, College of Education, “Restorative Approach in Schools,” <https://education.ufl.edu/behavior-management-resource-guide/2016/03/08/restorative-approach-in-schools/#:~:text=What%20Does%20a%20Restorative%20Approach,and%20systematically%20implemented%20school%20wide> (accessed March 1, 2021).

<sup>276</sup> SAMHSA, *SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach* (Rockville, MD: HHS Publication No. (SMA) 14-4884. Substance Abuse and Mental Health Services Administration, 2014), 9, [https://ncsacw.samhsa.gov/userfiles/files/SAMHSA\\_Trauma.pdf](https://ncsacw.samhsa.gov/userfiles/files/SAMHSA_Trauma.pdf).

<sup>277</sup> The University of Chicago and Urban Education Institute, *New Knowledge: Practicing Trauma-Responsive Teaching*, [\[https://uei.uchicago.edu/sites/default/files/documents/UEI%202017%20New%20Knowledge%20-%20Practicing%20Trauma-Responsive%20Teaching.pdf](https://uei.uchicago.edu/sites/default/files/documents/UEI%202017%20New%20Knowledge%20-%20Practicing%20Trauma-Responsive%20Teaching.pdf), (accessed March 1, 2021).

<sup>278</sup> District of Columbia State Board of Education, *Resolution to Recognize the Importance of Removing All Police From DC Public and Charter Schools* (Washington, DC: District of Columbia State Board of Education, 2020)

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<https://sboe.dc.gov/sites/default/files/dc/sites/sboe/documents/SR20-10%20Supporting%20Police%20Free%20Schools%20wAMENDMENTS%20SIGNED.pdf> (accessed March 2, 2021).

<sup>279</sup> District Task Force on Jails & Justice, *Jails & Justice: Our Transformation Starts Today: Phase II Findings and Implementation Plan* (Washington, DC: District Task Force on Jails & Justice, 2021) <http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf> (accessed March 2, 2021).

<sup>280</sup> “Nonpublic school grounds” means any part of the school not open to the public at the time, which could be all of the school grounds or certain areas of the school. When public events are hosted on school grounds, law enforcement would not need a warrant.

<sup>281</sup> Exigent circumstances are “circumstances that would cause a reasonable person to believe that entry (or other relevant prompt action) was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.” “Exigent Circumstances,” Cornell Law School Legal Information Institute, [https://www.law.cornell.edu/wex/exigent\\_circumstances#:~:text=Exigent%20circumstances%20%2D%20%22circumstances%20that%20would,some%20other%20consequence%20improperly%20frustrating](https://www.law.cornell.edu/wex/exigent_circumstances#:~:text=Exigent%20circumstances%20%2D%20%22circumstances%20that%20would,some%20other%20consequence%20improperly%20frustrating) (accessed March 9, 2021).

<sup>282</sup> MPD GO-RAR-310.08 (Handling School-Related Events), § II. Effective September 11, 2020, [https://go.mpdconline.com/GO/GO\\_310\\_08.pdf](https://go.mpdconline.com/GO/GO_310_08.pdf) (accessed February 28, 2021).

<sup>283</sup> Kristin Henning, “The Intersection of Race, Adolescence, and Policing in DC” (unpublished document, November 18, 2020).

<sup>284</sup> MPD GO-RAR-310.08 (Handling School-Related Events), § II. Effective September 11, 2020,

[https://go.mpdconline.com/GO/GO\\_310\\_08.pdf](https://go.mpdconline.com/GO/GO_310_08.pdf) (accessed February 28, 2021).

<sup>285</sup> *Id.*

<sup>286</sup> Office of the State Superintendent of Education, “2019 DC School Report Card Metric Scores Public Data,” <https://osse.dc.gov/page/dc-school-report-card-resource-library> (accessed March 01, 2021).

<sup>287</sup> District of Columbia Public Schools, “DCPS at a Glance: Enrollment,” <https://dcps.dc.gov/page/dcps-glance-enrollment> (accessed March 1, 2021).

<sup>288</sup> Kelly O’Meara, email to the DC Police Reform Commission, March 7, 2021.

<sup>289</sup> Advancement Project and Alliance for Educational Justice, *We Came to Learn*, 40, <https://advancementproject.org/wp-content/uploads/WCTLweb/index.html#page=1>, (accessed February 28, 2021).

<sup>290</sup> *Id.*, 38.

<sup>291</sup> See District of Columbia Public Schools Chapter B25 for the full list of weapons: 15, <https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCMR-Chapter-25-Title-5-Final-Rulemaking-2009.pdf>.

<sup>292</sup> DC Code § 22–4502.01

<sup>293</sup> MPD GO-PER-110.11 (Uniform, Equipment, and Appearance Standards), § II.C Effective July 3, 2019,

[https://go.mpdconline.com/GO/GO\\_110\\_11.pdf](https://go.mpdconline.com/GO/GO_110_11.pdf) (accessed February 28, 2021).

<sup>294</sup> Christina Tkacik, “Baltimore City school board votes ‘no’ to arming officers,” *The Baltimore Sun*, January 22, 2019, <https://www.baltimoresun.com/education/bs-md-ci-board-votes-20190122-story.html> (accessed February 28, 2021).

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## Section IV

<sup>295</sup> Barry Friedman, “Disaggregating the Police Function,” *University of Pennsylvania Law Review* (2020-2021 forthcoming), <https://ssrn.com/abstract=3564469>.

<sup>296</sup> DC Police Reform Commission, data analysis using crime data published by MPD accessible at <https://dcatlas.dcgis.dc.gov/crimecards/>.

<sup>297</sup> Peter Hermann and Clarence Williams, “1-yr-old Carmelo Duncan is the latest victim of gun violence in DC as homicides hit a 15-year high,” *Washington Post*, December 3, 2020, [https://www.washingtonpost.com/local/public-safety/carmelo-duncan-fatal-shooting-dc/2020/12/03/fa0486de-3560-11eb-a997-1f4c53d2a747\\_story.html](https://www.washingtonpost.com/local/public-safety/carmelo-duncan-fatal-shooting-dc/2020/12/03/fa0486de-3560-11eb-a997-1f4c53d2a747_story.html) (accessed March 10, 2021).

<sup>298</sup> DC Police Reform Commission, data analysis using crime data published by MPD accessible at <https://dcatlas.dcgis.dc.gov/crimecards/>. In this analysis, “gun violence” includes both gun homicides and assaults with a deadly weapon in which the weapon used was a gun.

<sup>299</sup> In addition to a large body of literature documenting the connection between material deprivation and violent crime, the Commission’s own local analysis shows a statistically significant correlation between the prevalence of gun violence and standard measures of poverty based on income, rates of unemployment, and proportion of families receiving government assistance.

<sup>300</sup> University of Maryland Professor Joseph Richardson and former Deputy Mayor for Public Safety Dr. Roger Mitchell both emphasized the social determinants of violence during meetings of the Committee on Assessing and Expanding Violence Reduction Efforts, October 30, 2020, and December 21, 2020, respectively.

<sup>301</sup> Beverly Smith-Brown, meeting with the DC Police Reform Commission, January 25, 2020.

<sup>302</sup> “The T.R.I.G.G.E.R. Project,” The T.R.I.G.G.E.R. Project, 2020, [www.thetriggerproject.org](http://www.thetriggerproject.org) (accessed March 10, 2021).

<sup>303</sup> See, for example, Adam Gopnik, “The Great Crime Decline: Drawing the right lessons from the fall in urban crime,” *The New Yorker*, February 5, 2018, <https://www.newyorker.com/magazine/2018/02/12/the-great-crime-decline> (accessed March 10, 2021).

<sup>304</sup> Patrick Sharkey, *Uneasy Peace: The Great Crime Decline, the Renewal of City Life, and the Next War on Violence* (New York: W. W. Norton & Co., 2018).

<sup>305</sup> Patrick Sharkey, “Op-ed: Community investment, not punishment, is key to reducing violence,” *Los Angeles Times*, January 25, 2018, <https://www.latimes.com/opinion/op-ed/la-oe-sharkey-violence-community-investment-20180125-story.html> (accessed March 10, 2021).

<sup>306</sup> Annual budget numbers provided to the Commission by ONSE, October 26, 2020. MPD budget based on data available to the Council.

<sup>307</sup> Dr. Roger Mitchell in his role as interim deputy mayor for public safety, meeting with the DC Police Reform Commission, December 21, 2020.

<sup>308</sup> Jenny Gathright, “DC Announces New Gun Violence Prevention Leader Along with Other Cabinet Adjustments,” *DCist*, January 28, 2021, <https://dcist.com/story/21/01/28/dc-announces-new-gun-violence-prevention-leader-along-with-other-cabinet-adjustments/> (accessed March 10, 2021).

<sup>309</sup> Mayor Muriel Bowser, “Mayor Muriel Bowser’s Situational Update,” presentation, February 17, 2021, [https://mayor.dc.gov/sites/default/files/dc/sites/coronavirus/release\\_content/attachments/Situational-Update-Presentation\\_02-17-21.pdf](https://mayor.dc.gov/sites/default/files/dc/sites/coronavirus/release_content/attachments/Situational-Update-Presentation_02-17-21.pdf) (accessed March 10, 2021).

<sup>310</sup> There is growing support nationally for non-police government entities dedicated to public safety. In several jurisdictions they are called the Office of Neighborhood Safety. For more information, see: Betsy Pearl, “Beyond Policing: Investing in Offices of Neighborhood Safety,” *Center for American Progress*, October 15, 2020, <https://www.americanprogress.org/issues/criminal-justice/reports/2020/10/15/491545/beyond-policing-investing-offices-neighborhood-safety/> (accessed March 10, 2021).

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- <sup>311</sup> Professor Joseph Richardson, meeting with the DC Police Reform Commission, October 30, 2020.
- <sup>312</sup> Betsy Pearl, “Beyond Policing: Investing in Offices of Neighborhood Safety.”
- <sup>313</sup> ONSE Director Delbert McFadden, Performance Oversight Hearing conducted by the Committee on the Judiciary and Public Safety, March 4, 2021.
- <sup>314</sup> John Jay College Research Advisory Group on Preventing and Reducing Community Violence, *Reducing Violence Without Police: A Review of Research Evidence* (New York City: John Jay Research and Evaluation Center, November 2020), <https://johnjayrec.nyc/2020/11/09/av2020/> (accessed March 10, 2021).
- <sup>315</sup> Anthony Braga, et al., *Oakland Ceasefire Evaluation: Final Report to the City of Oakland* (May 2019), <https://cao-94612.s3.amazonaws.com/documents/Oakland-Ceasefire-Evaluation-Final-Report-May-2019.pdf> (accessed March 10, 2021).
- <sup>316</sup> Catarina G. Roman, et al., *Philadelphia CeaseFire: Findings from the Impact Evaluation*, (Philadelphia: Temple University, January 2017), [https://cvg.org/wp-content/uploads/2020/03/SummaryofPhilaCeaseFireFindingsFormatted\\_Jan2017.pdf](https://cvg.org/wp-content/uploads/2020/03/SummaryofPhilaCeaseFireFindingsFormatted_Jan2017.pdf) (accessed March 10, 2021).
- <sup>317</sup> Ellicott C. Matthay, et al., “Firearm and Nonfirearm Violence After Operation Peacemaker Fellowship in Richmond, California, 1996–2016,” *American Journal of Public Health* 109 (October 2019): 1605-1611, <https://doi.org/10.2105/AJPH.2019.305288>.
- <sup>318</sup> Sheyla A. Delgado, et al., “The Effects of Cure Violence in the South Bronx and East New York, Brooklyn,” in *Denormalizing Violence: A Series of Reports From the John Jay College Evaluation of Cure Violence Programs in New York City* (New York City: Research and Evaluation Center, John Jay College of Criminal Justice, City University of New York, 2017), <https://johnjayrec.nyc/wp-content/uploads/2017/10/CVInSoBronxEastNY.pdf> (accessed March 10, 2021).
- <sup>319</sup> John Jay College Research Advisory Group on Preventing and Reducing Community Violence, *Reducing Violence Without Police: A Review of Research Evidence*.
- <sup>320</sup> The Justice Collaborative Institute, *The Case for Violence Interruption as An Alternative to Policing* (The Justice Collaborative Institute, June 2020), <https://www.filesforprogress.org/memos/violence-interruption.pdf> (accessed March 18, 2021).
- <sup>321</sup> Interim Deputy Mayor for Public Safety Dr. Roger Mitchell, meeting with the DC Police Reform Commission, December 21, 2020.
- <sup>322</sup> Tony Lewis, meeting with the DC Police Reform Commission, November 2, 2020. Mr. Lewis was recently appointed to co-chair the Community Advisory Group of the District’s new Building Blocks initiative.
- <sup>323</sup> The ONSE initiative launched with all 20 sites in 2018. Cure the Streets started earlier and with two sites, then added four more in December 2019.
- <sup>324</sup> Lashonia Thompson, Cure the Streets (CTS) co-lead, and Eric Weaver, founder and executive director of National Association for the Advancement of Returning Citizens (NARC), meeting with the DC Police Reform Commission, December 11, 2020. NARC provides violence interruption as part of CTS.
- <sup>325</sup> Eric Weaver, meeting with the DC Police Reform Commission, December 11, 2020.
- <sup>326</sup> District Task Force on Jails & Justice, *Jails and Justice: Our Transformation Starts Today* (Washington, DC: District Task Force on Jails & Justice, 2021), <http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf> (accessed March 10, 2021).
- <sup>327</sup> Attorney General Karl Racine, Performance Oversight Hearing conducted by the Committee on the Judiciary and Public Safety, March 4, 2021.
- <sup>328</sup> DC Police Reform Commission analysis conducted using crime data published by MPD accessible at <https://dcatlas.dcgis.dc.gov/crimecards/>. Note: The differences are even greater, of course, when comparing areas of the District

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with violence interrupters and areas without them, since overall District measures encompass the ONSE and CTS sites. This analysis obviously masks what can be significant variation among sites in terms of crime trends. Data for each CTS site is available at <https://oag.dc.gov/public-safety/cure-streets-oags-violence-interruption-program>. ONSE does not post comparable data.

<sup>329</sup> Id.

<sup>330</sup> During a March 4, 2021 Performance Oversight Hearing conducted by the Committee on the Judiciary and Public Safety, ONSE Director Delbert McFadden mentioned a 46% drop in overall violent crime in Mayfair and Paradise, two priority communities for ONSE. Later during the same hearing, Attorney General Karl Racine noted a 47% drop in gun homicides across all six CTS sites.

<sup>331</sup> See, for example, Richard Rosenfeld, Thomas Abt, and Ernesto Lopez, *Pandemic, Social Unrest, and Crime in U.S. Cities: 2020 Year-End Update* (Washington, DC: Council on Criminal Justice, January 2021),

[https://craftmediabucket.s3.amazonaws.com/uploads/Year\\_End\\_Crime\\_Update\\_Design.pdf](https://craftmediabucket.s3.amazonaws.com/uploads/Year_End_Crime_Update_Design.pdf) (accessed March 10, 2021).

<sup>332</sup> See, for example, Mike McLively and Brittana Nieto, *A Case Study in Hope: Lessons from Oakland's Remarkable Reduction in Gun Violence* (San Francisco: Giffords Law Center, Faith in Action, and Black and Brown Gun Violence Prevention Consortium, April 2019), <https://giffords.org/lawcenter/report/a-case-study-in-hope-lessons-from-oaklands-remarkable-reduction-in-gun-violence/> (accessed March 10, 2021).

<sup>333</sup> DC Police Reform Commission, geocoded data analysis conducted using crime data published by MPD accessible at <https://dcatlas.dcgis.dc.gov/crimecards/>.

<sup>334</sup> ONSE Strategy and Innovation Officer Setareh Yelle, meeting with the DC Police Reform Commission, January 22, 2021.

<sup>335</sup> For example, University of Maryland Professor Joseph Richardson pointed to Baltimore as a cautionary example of what can go wrong when programs expand too quickly, in his remarks to the Commission on October 30, 2020.

<sup>336</sup> For information about hospital services associated with each of the five levels of care, see <https://www.traumacenters.org/page/TraumaCentersLevels>.

<sup>337</sup> Jess Arnold, "DC's only hospital east of the river doesn't have a trauma center," *WUSA9*, February 28, 2020, <https://www.wusa9.com/article/news/health/dc-nurses-new-hospital-east-of-river-wont-solve-problems-united-medical-center/65-805d19b1-d9b6-4a75-b53c-961ba4362376> (accessed March 10, 2021).

<sup>338</sup> Mayor Muriel Bowser, "Building a New GW Health Hospital at St. Elizabeths in Ward 8," 2020, <https://dhcf.dc.gov/sites/default/files/u23/GW%20Health%20Hospital%20with%20Verified%20Trauma%20Center%20at%20St%20Elizabeths%20in%20Ward%208%20One%20FINAL.pdf> (accessed March 10, 2021).

<sup>339</sup> Jonathan Purtle, et al., "Hospital-Based Violence Prevention: Progress and Opportunities," *Annals of Internal Medicine* 163, no. 9 (November 2015): 715-718, <https://doi.org/10.7326/M15-0586>.

<sup>340</sup> University of Maryland Professor Joseph Richardson, meeting with the DC Police Reform Commission, November 30, 2020.

<sup>341</sup> The five HVIPs are located at George Washington University Hospital, Howard University Hospital, Medstar Washington Hospital Center, United Medical Center, and UMD Prince George's Hospital Center.

<sup>342</sup> Jonathan Purtle, et al., "Hospital-Based Violence Prevention: Progress and Opportunities."

<sup>343</sup> Injury recidivism rate and cost analysis finding for the San Francisco Wraparound Project available at <https://wraparound.ucsf.edu/research/injury-recidivism-rate-and-cost-analysis.aspx>.

<sup>344</sup> Teresa M Bell, et al., "Long-term evaluation of a hospital-based violence intervention program using a regional health information exchange," *Journal of Trauma and Acute Care Surgery* 84, no. 1 (January 2018): 175-182. <https://doi.org/10.1097/TA.0000000000001671>.

<sup>345</sup> OVSJG Director Michelle Garcia, meeting with the DC Police Reform Commission, December 7, 2020.

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<sup>346</sup> Reinjury information is logged during the quarter it takes place regardless of the time of the original injury and may not account for people who are reinjured and treated at a different hospital. Tracking stops when someone is no longer engaged in services. OVSJG Director Michelle Garcia, emails to the DC Police Reform Commission, February 19-23, 2021.

<sup>347</sup> At the moment, there is no guarantee the comparatively small-scale HVIP at UMC will be shifted to St. Elizabeths East and expanded when UMC closes.

<sup>348</sup> Betsy Pearl, *Beyond Policing: Investing in Offices of Neighborhood Safety*.

<sup>349</sup> James Forman, Jr., meeting with the DC Police Reform Commission, February 23, 2021.

<sup>350</sup> Keith L. Alexander, "DC judge dismisses murder charge against violence interrupter," *Washington Post*, February 8, 2021, [https://www.washingtonpost.com/local/public-safety/cotey-wynn-murder-charge-dropped/2021/02/08/493d9c98-6a47-11eb-9ead-673168d5b874\\_story.html?utm\\_campaign=wp\\_local\\_headlines&utm\\_medium=email&utm\\_source=newsletter&wpisrc=nl\\_lclheads&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F2f68fd7%2F6022738c9d2fda4c88dab86f%2F596b12bb9bbc0f403f8a93cb%2F36%2F55%2F6022738c9d2fda4c88dab86f](https://www.washingtonpost.com/local/public-safety/cotey-wynn-murder-charge-dropped/2021/02/08/493d9c98-6a47-11eb-9ead-673168d5b874_story.html?utm_campaign=wp_local_headlines&utm_medium=email&utm_source=newsletter&wpisrc=nl_lclheads&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F2f68fd7%2F6022738c9d2fda4c88dab86f%2F596b12bb9bbc0f403f8a93cb%2F36%2F55%2F6022738c9d2fda4c88dab86f) (accessed March 10, 2021).

<sup>351</sup> Tony Lewis, meeting with the DC Police Reform Commission, November 2, 2020.

<sup>352</sup> Commissioner Corwin Knight, meeting of the DC Police Reform Commission, November 2, 2020.

<sup>353</sup> Department of Employment Services, *DC Labor Market Indicators, January 2015 - December 2020* (Washington, DC: Department of Employment Services), [https://does.dc.gov/sites/default/files/dc/sites/does/page\\_content/attachments/DC%20Labor%20Market%20Indicators\\_December2020.pdf](https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/DC%20Labor%20Market%20Indicators_December2020.pdf) (accessed March 10, 2021).

<sup>354</sup> University of Maryland Professor Joseph Richardson, meeting with the DC Police Reform Commission, November 30, 2020.

<sup>355</sup> Duane ("Wayne") Cunningham, meeting of the DC Police Reform Commission, November 2, 2020.

<sup>356</sup> Peter Hermann, "He used to sell drugs on DC streets. Now he's paid to make them safer," *Washington Post*, December 14, 2018, [https://www.washingtonpost.com/local/public-safety/he-used-to-sell-drugs-on-dc-streets-now-hes-paid-to-make-them-safer/2018/12/13/eea91b66-e12e-11e8-ab2c-b31dcd53ca6b\\_story.html](https://www.washingtonpost.com/local/public-safety/he-used-to-sell-drugs-on-dc-streets-now-hes-paid-to-make-them-safer/2018/12/13/eea91b66-e12e-11e8-ab2c-b31dcd53ca6b_story.html) (accessed March 10, 2021).

<sup>357</sup> ONSD Director Delbert McFadden, Performance Oversight Hearing conducted by the Committee on the Judiciary and Public Safety, March 4, 2021.

<sup>358</sup> Roca Inc., "Outcomes," <https://rocainc.org/impact/outcomes/> (accessed March 10, 2021).

<sup>359</sup> Abt Associates, *Outcomes Dashboard for Massachusetts High-Risk Young Men, Fiscal Year 2019* (Massachusetts: Roca Inc.), [https://rocainc.org/wp-content/uploads/2019/10/FY19\\_MA-Young-Men\\_Dashboard-FINAL\\_2019\\_10.08.pdf](https://rocainc.org/wp-content/uploads/2019/10/FY19_MA-Young-Men_Dashboard-FINAL_2019_10.08.pdf) (accessed March 10, 2021).

<sup>360</sup> Roca Inc., "Stage-Based Programming," <https://rocainc.org/work/our-intervention-model/stage-based-programming/> (accessed March 10, 2021).

<sup>361</sup> See, for example: Mark W. Lipsey, Nana A Landenberger, and Sandra J. Wilson, "Effects of Cognitive-Behavioral Programs for Criminal Offenders" *Campbell Systematic Reviews* 3, no. 1 (August 2007): 1-27, <https://doi.org/10.4073/csr.2007.6>; and Frank S. Pearson, et al., "The Effects of Behavioral/Cognitive-Behavioral Programs on Recidivism," *Crime & Delinquency* 48, no. 3 (July 2002): 476-496, <https://doi.org/10.1177/001112870204800306> (accessed March 10, 2021).

<sup>362</sup> Pathways accepts referrals from the Court Services and Offender Supervision Agency (CSOSA), and a majority of participants in the initial four cohorts were under court-ordered supervision. Office of Neighborhood Safety and Engagement to Charles Allen, January 8, 2020, <https://dccouncil.us/wp-content/uploads/2020/01/IPS-Performance-Oversight-Responses-2020-ONSE.pdf> (accessed March 10, 2021).

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<sup>363</sup> University of Maryland Professor Joseph Richardson, meeting with the DC Police Reform Commission, November 30, 2020.

<sup>364</sup> OVSJG Director Michelle Garcia, meeting with the DC Police Reform Commission, December 7, 2020.

<sup>365</sup> ONSE Director Delbert McFadden, Performance Oversight Hearing conducted by the DC Council Committee on the Judiciary and Public Safety, March 4, 2021.

<sup>366</sup> Deputy Mayor for Public Safety Roger Mitchell, meeting with the DC Police Reform Commission, December 21, 2020.

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<https://mayor.dc.gov/release/mayor-bowser-and-greater-washington-community-foundation-launch-partnership-end-homelessness> (accessed March 10, 2021).

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## Section V

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<sup>396</sup> *Crudep, et al. v. District of Columbia*, [2020]. No. 1:2020-cv-01135.

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<sup>398</sup> This data, as well as the other MPD stop data in this report, is drawn from the raw data MPD has made available in spreadsheet format on its website for July 22, 2019 - December 31, 2020, available at <https://mpdc.dc.gov/stopdata>. The Commission has taken this raw data and attempted to break it down into traffic stops and non-traffic (pedestrian) stops, as distinguished from how MPD reports the data according to “ticket” and “non-ticket” stops, which do not neatly break down into traffic and non-traffic stops. To disaggregate traffic and non-traffic stops, the Commission took the following steps with the variables/data fields in MPD’s spreadsheets: (1) if any values in the variable `stop_reason_nonticket` field contained the words “traffic” or “crash,” the stop was categorized as a traffic stop; (2) if any values in the variable `stop_reason_ticket` field contained the phrases “equipment violation,” “moving violation,” or “crash,” the stop was categorized as a traffic stop; (3) if a warning or ticket was issued for one of 11 pedestrian violation codes (e.g., T527), the stop was categorized as a non-traffic stop; (4) if any values in the variable `arrest_charges` contained the following offenses, the stop was categorized as a traffic stop: driving under the influence, driving while intoxicated, reckless driving, driving with a revoked permit, operating an unauthorized vehicle, driving without a permit, loaning registration, misuse of temporary tags, counterfeit tags, allowing operation without proper tags, or operating ATVs or dirt bikes; (5) all remaining stops were classified as non-traffic stops, with the exception of any `stop_type` value with the word “harbor,” which indicated a harbor stop and was removed.

<sup>399</sup> These figures are based on the Census Bureau’s American Community Survey 2019 (5-Year Estimates). The data were pulled from Social Explorer (<https://www.socialexplorer.com>) and analyzed in ArcGIS to determine the distribution of the Black population where census tract boundaries and police district boundaries do not align.

<sup>400</sup> American Civil Liberties Union, “Racial Disparities in Stops by the DC Metropolitan Police Department: Review of Five Months of Data,” June 16, 2020, at 4, [https://www.acludc.org/sites/default/files/2020\\_06\\_15\\_aclu\\_stops\\_report\\_final.pdf](https://www.acludc.org/sites/default/files/2020_06_15_aclu_stops_report_final.pdf).

<sup>401</sup> *Id.* at 7.

<sup>402</sup> Stephen Rushin and Griffin Sims Edward, “An Empirical Assessment of Pretextual Stops and Racial Profiling,” *Stanford Law Review* (forthcoming), available at SSRN: <https://ssrn.com/abstract=3506876>.

<sup>403</sup> Jonathan Blanks, “Thin Blue Lies: How Pretextual Stops Undermine Police Legitimacy,” *Case Western Reserve Law Review* 66, no. 4, 931-946 (2016), <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4660&context=caselrev>.

<sup>404</sup> *State v. Ochoa*, 206 P.3d 143 (N.M. Ct. App. 2008); *State v. Ladson*, 979 P.2d 833 (Wash. 1999).

<sup>405</sup> *State v. Arreola-Botello*, 365 Ore. 695 (2019).

<sup>406</sup> Washtenaw County Office of the Prosecuting Attorney, *Policy Directive 2021-09: Policy Regarding Pretext Stops*, <https://www.washtenaw.org/DocumentCenter/View/19235/Pretext-Stops-Policy>.

<sup>407</sup> San Francisco District Attorney’s Office, *Policy Directive: Declination of Contraband Charges Based on Pretextual Stops*, <https://sfdistrictattorney.org/wp-content/uploads/2020/11/Declination-of-Contraband-Charges-Based-on-Pretextual-Stops.pdf>.

<sup>408</sup> See, e.g., Newark Police Division General Order 18-14 (Consensual Citizen Contacts and Investigatory Stops), Effective December 31, 2018, <https://www.newarkpdmonitor.com/wp-content/uploads/2019/04/Stops-Policy.pdf>.

<sup>409</sup> Baltimore Police Commissioner, Policy 1112 (Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches), Effective February 9, 2021, <https://www.powerdms.com/public/BALTIMOREMD/documents/51035>.

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<sup>411</sup> Jails and Justice, at 35.

<sup>412</sup> Justice Collaborative.

<sup>413</sup> Emilie Raguso, “Berkeley votes to limit low-level traffic stops to reduce policing disparities,” *Berkeleyside*, February 24, 2021, <https://www.berkeleyside.com/2021/02/24/berkeley-police-reform-traffic-stops-racial-disparities>.

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## **Section VI**

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<sup>500</sup> MPD GO-OPS-305.01 (Interacting with Juveniles), effective January 28, 2020, [https://go.mpdconline.com/GO/GO\\_305\\_01.pdf](https://go.mpdconline.com/GO/GO_305_01.pdf).

<sup>501</sup> MPD GO-OPS-309.06 (Child Abuse and Neglect), effective November 18, 2010, [https://go.mpdconline.com/GO/GO\\_309\\_06.pdf](https://go.mpdconline.com/GO/GO_309_06.pdf).

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<sup>517</sup> *Id.*

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<sup>532</sup> Metropolitan Police Department, “Youth Advisory Council (YAC),” <https://mpdc.dc.gov/page/youth-advisory-council-yac>.

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<sup>536</sup> Metropolitan Police Department, “Youth Advisory Council (YAC),” <https://mpdc.dc.gov/page/youth-advisory-council-yac>.

<sup>537</sup> Debra F. Cushing and Willem van Vliet, “Children’s right to the city: the emergence of youth councils in the United States,” *Children’s Geographies*, 2016.

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<sup>538</sup> This proposal pushes DC to uplift youth voices beyond the common practices in other cities. Nevertheless, valuable and applicable guidance for this process has been shared by the National League of Cities and the Forum for Youth Investment: <https://med-fom-learningcircle.sites.olt.ubc.ca/files/2010/09/Building-Effective-Youth-Councils.pdf>.

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<sup>548</sup> DC Code § 24–403.03.

<sup>549</sup> *Id.*

<sup>550</sup> Anonymity should be preserved to the fullest extent possible. If disaggregating data may allow for the identification of a particular student or youth, the data should be disaggregated to the fullest extent possible without risking the identification of that individual.

<sup>551</sup> U.S. Department of Education, “Office for Civil Rights: Civil Rights Data Collection (CRDC),” (Washington, DC: U.S. Department of Education, 2021), <https://www.ed.gov/about/offices/list/ocr/data.html>.

## **Section VII**

<sup>552</sup> U.S. Department of Education, “District of Columbia Public Schools Washington, DC: Discipline Report,” (Washington, DC: U.S. Department of Education: Civil Rights Data Collection, 2017), <https://ocrdata.ed.gov/profile/9/district/31590/disciplinereport?report=true>.

<sup>553</sup> DC Code “District of Columbia Public Schools: Notice of Final Rulemaking: Chapter B25 Student Discipline.” [dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCMR-Chapter-25-Title-5-Final-Rulemaking-2009.pdf](https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/DCMR-Chapter-25-Title-5-Final-Rulemaking-2009.pdf).

<sup>554</sup> Norman Conti, “A Visigoth System: Shame, Honor, and Police Socialization,” *Journal of Contemporary Ethnography* 38, no. 3 (March 2009): 409–432, <https://doi.org/10.1177/0891241608330092>

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(“[P]aramilitary stress academies produce defensive and depersonalized officers, while collegiate nonstress training models, a small minority in American policing, have no such consequences.”).

<sup>555</sup> Michael L. Birzer, “Police Training in the 21st Century,” *FBI Law Enforcement Bulletin* 68, no. 7 (July 1999): 16-19, <https://www.ojp.gov/library/abstracts/police-training-21st-century>; Michael L. Birzer and Ronald Tannehill, “A More Effective Training Approach for Contemporary Policing,” *Police Quarterly* 4, no. 2 (2001): 233-252, <https://journals.sagepub.com/doi/pdf/10.1177/109861101129197815>.

<sup>556</sup> President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing* (Washington, DC: Office of Community Oriented Policing Services, 2015), [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf); National Police Foundation, *National Survey on Officer Safety Training: Executive Brief*, [http://www.policefoundation.org/wp-content/uploads/2020/08/National-Survey-on-Officer-Safety-Training\\_Executive-Brief\\_508-Compliant.pdf](http://www.policefoundation.org/wp-content/uploads/2020/08/National-Survey-on-Officer-Safety-Training_Executive-Brief_508-Compliant.pdf); Eric P. Werth, “Scenario training in police academies: developing students’ higher-level thinking skills,” *Police Practice and Research* 12, no. 4 (2011): 325-340, [https://aquila.usm.edu/cgi/viewcontent.cgi?article=1291&context=masters\\_theses](https://www.tandfonline.com/doi/pdf/10.1080/15614263.2011.563970?casa_token=60LSMJYEpUoAAAAA:cR-EDV0Iisw4yZ2yPENsnmo23XhFlyruqFDBJJ6i-M8kHkwP0U_LiQ16hYaRw7bHCdVNA4H_IzIU; Citlali Alexandra Déverge, Master’s Thesis, the University of Southern Mississippi, <i>Police Education and Training: A Comparative Analysis of Law Enforcement Preparation in the United States and Canada</i> (2016), <a href=).

<sup>557</sup> National Police Foundation, *National Survey on Officer Safety Training: Executive Brief*.

<sup>558</sup> Metropolitan Police Department, Performance Accountability Report FY12 (February 2013), [https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/MPD\\_FY12PAR.pdf](https://oca.dc.gov/sites/default/files/dc/sites/oca/publication/attachments/MPD_FY12PAR.pdf).

<sup>559</sup> Annie Li Kringsen and Jonathan Allen Kringsen, “Outside the Academy: Learning Community Policing Through Community Engagement,” *Ideas in American Policing* 20 (July 2017), [https://www.policefoundation.org/wp-content/uploads/2017/08/IAP\\_Outside-the-Academy-Learning-Community-Policing-through-Community-Engagement.pdf](https://www.policefoundation.org/wp-content/uploads/2017/08/IAP_Outside-the-Academy-Learning-Community-Policing-through-Community-Engagement.pdf).

<sup>560</sup> An Act to provide that the authorized strength of the Metropolitan Police force of the District of Columbia shall be not less than 2,500 officers and members, Pub. L. 84-514 (1956).

<sup>561</sup> An Act to provide that the authorized strength of the Metropolitan Police force of the District of Columbia shall be not less than 3,000 officers and members, Pub. L. 87-60 (1961); DC Code § 5-105.05.

<sup>562</sup> 102 Cong. Rec. 7028 (1956); 107 Cong. Rec. 10604 (1961).

<sup>563</sup> N.Y. Comp. Codes R. & Regs. Tit. 9 § 6056.1 (2021).

<sup>564</sup> Roger L. Goldman, “A Model Decertification Law,” *St. Louis University Public Law Review* 32 (2012): 147, <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1221&context=faculty>.

<sup>565</sup> See, for example: the list published in Minnesota. Minnesota Peace Officer License Revocations, <https://dps.mn.gov/entity/post/Documents/peace-officer-license-revocations.pdf>.

<sup>566</sup> International Association of Directors of Law Enforcement Standards and Training, “National Decertification Index,” <https://www.iadlest.org/our-services/ndi/about-ndi>.

<sup>567</sup> Goldman, “A Model Decertification Law.”

<sup>568</sup> Robert Trojanowicz and Bonnie Bucqueroux, *Community Policing and the Challenge of Diversity* (1991), <https://www.ojp.gov/pdffiles1/Photocopy/134975NCIRS.pdf>.

<sup>569</sup> U.S. Department of Justice Civil Rights Division Office of Justice Programs, and U.S. Equal Employment Opportunity Commission, *Diversity in Law Enforcement: A Literature Review* (January 2015), <https://www.urbanainllinois.us/sites/default/files/attachments/diversity-law-enforcement-literature-review-jan-2015.pdf>.

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<sup>570</sup> The Behavioral Insights Team, *Behavioral Insights for Building the Police Force of Tomorrow*, [https://www.bi.team/wp-content/uploads/2019/01/BIT-Police-report\\_MKV5-WEB.pdf](https://www.bi.team/wp-content/uploads/2019/01/BIT-Police-report_MKV5-WEB.pdf).

<sup>571</sup> Susan Shah, Jim Burch, and S. Rebecca Neusteter, eds., *Leveraging CompStat to Include Community Measures in Police Performance Management. Perspectives from the Field* (New York, NY: Vera Institute of Justice, 2018), [https://www.compstat360.org/wp-content/uploads/2018/05/Leveraging\\_CompStat.pdf](https://www.compstat360.org/wp-content/uploads/2018/05/Leveraging_CompStat.pdf).

<sup>572</sup> Konstantinos Papazoglou and Brooke McQuerrey Tuttle, “Fighting Police Trauma: Practical Approaches to Addressing Psychological Needs of Officers,” *Journal of Police Emergency Response* 8, no. 3 (2018), <https://journals.sagepub.com/doi/full/10.1177/2158244018794794>; Bryan L. Steinkopf, Kori A. Hakala, and Vincent B. Van Hasselt, “Motivational Interviewing: Improving the Delivery of Psychological Services to Law Enforcement,” *Professional Psychology Research and Practice* 46, no. 5 (2015), [https://www.researchgate.net/publication/281610520\\_Motivational\\_Interviewing\\_Improving\\_the\\_Delivery\\_of\\_Psychological\\_Services\\_to\\_Law\\_Enforcement](https://www.researchgate.net/publication/281610520_Motivational_Interviewing_Improving_the_Delivery_of_Psychological_Services_to_Law_Enforcement); John M. Violanti, et al., “Police stressors and health: a state-of-the-art review,” *Policing* 40, no. 4 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6400077/>.

<sup>573</sup> U.S. Department of Justice Community Oriented Policing Services, *Law Enforcement Mental Health and Wellness Act: Report to Congress*, (Washington, DC: U.S. Department of Justice, March 2019), <https://cops.usdoj.gov/RIC/Publications/cops-p370-pub.pdf>.

<sup>574</sup> U.S. Department of Justice Office of Community Oriented Policing Services, “Department of Justice Establishes Community of Practice for Law Enforcement Mental Health and Wellness,” press release, December 22, 2020, <https://www.policefoundation.org/departement-of-justice-establishes-community-of-practice-for-law-enforcement-mental-health-and-wellness/>.

<sup>575</sup> An Act to provide support for law enforcement agency efforts to protect the mental health and well-being of law enforcement officers, and for other purposes, Pub. L. 115-113 (2018).

<sup>576</sup> President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*.

## **Section VIII**

<sup>577</sup> U.S. Department of Justice Community Oriented Policing Services, *Law Enforcement Mental Health and Wellness Programs: Eleven Case Studies*, (Washington, DC: 2019), [https://nccpsafety.org/assets/files/library/Law\\_Enforcement\\_Mental\\_Health\\_Case\\_Studies.pdf](https://nccpsafety.org/assets/files/library/Law_Enforcement_Mental_Health_Case_Studies.pdf).

<sup>578</sup> Metropolitan Police Department, Performance Oversight Responses to DC Council, March 2, 2020, <https://dccouncil.us/wp-content/uploads/2020/03/IPS-Performance-Oversight-Responses-2020-MPD.pdf>.

<sup>579</sup> Major Cities Chiefs Association, press release, June 4, 2020, <https://majorcitieschiefs.com/wp-content/uploads/2021/01/MCCA-Open-Letter-Update.pdf> (accessed February 25, 2021).

<sup>580</sup> Samuel E. Walker and Carol A. Archbold, *The New World of Police Accountability* (Sage Publishing, 2020), 10.

<sup>581</sup> Walker and Archbold, *The New World of Police Accountability*, 11.

<sup>582</sup> *Id.*

<sup>583</sup> Code of the District of Columbia §§ 5-1101 to 5-1115, <https://code.dccouncil.us/dc/council/code/titles/5/chapters/11/subchapters/I/> (accessed February 25, 2021).

<sup>584</sup> New York University School of Law Policing Project, Statement on Policing in the United States, (June 1, 2020), <https://www.policingproject.org/news-main/2020/6/1/policing-project-statement-on-policing> (accessed February 13, 2021).

<sup>585</sup> *Id.*

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<sup>586</sup> The President’s Task Force on 21st Century Policing, *Final Report*, (Washington, DC: United States Department of Justice Office of Community Oriented Policing Services, May 2015), 12, [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf) (accessed February 25, 2021).

<sup>587</sup> The Office of the District of Columbia Auditor already possesses subpoena authority. See: Code of the District of Columbia § 1-301.171, <https://code.dccouncil.us/dc/council/code/sections/1-301.171.html> (accessed February 15, 2021).

<sup>588</sup> See District of Columbia Municipal Regulations, Chapter 6A §§ 1100.1 to 1110.1, <https://securityofficerhq.com/files/dc-title-6a.pdf> (accessed March 13, 2021).

<sup>589</sup> Depending on the District’s acceptance and implementation of recommendations two and three, the Commission recommends renaming (not eliminating) the PCB and the OPC. To prevent confusion, the report will, unless otherwise noted, refer to the Police Complaints Board and the Office of Police Complaints by their current names.

<sup>590</sup> See *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Lewis v. United States*, 408 A.2d 303 (DC 1973). These cases generally require prosecutors to provide to defendants material that may be used to impeach prosecution witnesses, including prior convictions, pending investigations or criminal charges, cooperation agreements, and bad acts related to the witnesses’ veracity and credibility. Some prosecutors keep a list of officers for whom they must turn over such material and/or whom prosecutors have determined are not reliable witnesses.

<sup>591</sup> Code of the District of Columbia § 5-1104(d-2)(1), <https://code.dccouncil.us/dc/council/code/sections/5-1104.html> (accessed February 15, 2021).

<sup>592</sup> See Recommendation 3(a)(iii) and corresponding discussion for definition of “serious use of force,” which can be found in MPD GO-RAR-901.07 (Use of Force), § III.9, effective November 3, 2017, [https://go.mpdconline.com/GO/GO\\_901\\_07.pdf](https://go.mpdconline.com/GO/GO_901_07.pdf) (accessed February 14, 2021).

<sup>593</sup> *Id.*, § III.8. See Recommendation 3(a)(iii) and corresponding discussion for definition of “serious physical injury.”

<sup>594</sup> Cities that have established auditors, monitors, or inspectors general dedicated to auditing and examining their police departments’ operations include: Chicago, Denver (police and sheriff departments), Los Angeles, New Orleans, New York, San Jose, and Seattle. See: City of Chicago Office of the Inspector General, “Public Safety,” <https://igchicago.org/about-the-office/our-office/public-safety-section/> (accessed February 13, 2021); City and County of Denver, “Office of the Independent Monitor,” <https://www.denvergov.org/Government/Departments/Office-of-the-Independent-Monitor> (accessed February 13, 2021); Los Angeles Police Commission, “Office of the Inspector General—Los Angeles Police Commission,” <https://www.oig.lacity.org> (accessed February 13, 2021); Independent Police Monitor, “The New Orleans Independent Police Monitor,” <https://nolaipm.gov> (accessed February 13, 2021); New York City Department of Investigation, “Inspector General for the NYPD,” <https://www1.nyc.gov/site/doi/offices/oignypd.page> (accessed February 13, 2021); City of San Jose, “Independent Police Auditor,” <https://www.sanjoseca.gov/your-government/appointees/independent-police-auditor> (accessed February 13, 2021); Seattle.gov, “Office of Inspector General,” <https://www.seattle.gov/oig> (accessed February 13, 2021).

<sup>595</sup> Walker and Archbold, *The New World of Police Accountability*, 214.

<sup>596</sup> Policing Project New York University School of Law, “Front-end Voice in Policing,” <https://www.policingproject.org/front-end-landing>.

<sup>597</sup> See testimony of Barry Friedman, Creating a Community Commission for Public Safety and Accountability, Hearing before the Chicago City Council Committee on Public Safety, January 23, 2020, at 3-11, <https://www.policingproject.org/ccpsa-testimony> (accessed February 28, 2021).

<sup>598</sup> Walker and Archbold, *The New World of Police Accountability*, 217.

<sup>599</sup> *Id.*, 217, 232-233.

<sup>600</sup> *Id.*, 235-236.

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<sup>601</sup> Code of the District of Columbia § 5-1104(d-2)(1) (codifying provisions of DC Law 21-125, the Neighborhood Engagement Achieves Results Amendment Act of 2016), <https://code.dccouncil.us/dc/council/code/sections/5-1104.html> (accessed February 14, 2021).

<sup>602</sup> Code of the District of Columbia § 5-1104(d-3) (codifying provisions of DC Law 23-16, the Fiscal Year 2020 Budget Support Act of 2019), <https://code.dccouncil.us/dc/council/code/sections/5-1104.html> (accessed February 14, 2021).

<sup>603</sup> Policing Project New York University School of Law, “What Does Police Accountability Look Like?,” <https://www.policingproject.org/oversight> (accessed February 13, 2021).

<sup>604</sup> Walker and Archbold, *The New World of Police Accountability*, 214.

<sup>605</sup> Office of the District of Columbia Auditor, *The Durability of Police Reform: The Metropolitan Police Department and Use of Force 2008-2015* (Washington, DC: Office of the District of Columbia Auditor, January 28, 2016), <https://dcauditor.org/report/the-durability-of-police-reform-the-metropolitan-police-department-and-use-of-force-2008-2015/> (accessed February 13, 2021).

<sup>606</sup> Office of the District of Columbia Auditor, *Implementation of Recommendations for The Durability of Police Reform: the Metropolitan Police Department and Use of Force 2008-2015* (Washington, DC: Office of the District of Columbia Auditor, March 20, 2017), <https://dcauditor.org/report/the-durability-of-police-reform-the-metropolitan-police-department-and-use-of-force-2008-2015/> (accessed February 13, 2021).

<sup>607</sup> See Office of the District of Columbia Auditor, *Metropolitan Police Monitor Nearly 2,500 Demonstrations in 2014-2016 and Report No First Amendment Inquiries* (Washington, DC: Office of the District of Columbia Auditor, July 3, 2017), <https://dcauditor.org/report/metropolitan-police-monitor-nearly-2500-demonstrations-in-2014-2016-and-report-no-first-amendment-inquiries/> (accessed February 13, 2021); Office of the District of Columbia Auditor, *The Metropolitan Police Department Complies with Surveillance Portion of First Amendment Law* (Washington, DC: Office of the District of Columbia Auditor, January 23, 2019), <https://dcauditor.org/wp-content/uploads/2019/01/MPD.Compliance.Report.1.23.19.pdf> (accessed February 13, 2021).

<sup>608</sup> Office of the District of Columbia Auditor, *Statement by the Office of the District of Columbia Auditor (ODCA) on the ODCA Review of MPD Use of Force in Officer-Involved Fatalities* (September 15, 2020), <https://dcauditor.org/report/d-c-auditor-statement-on-review-of-officer-involved-fatalities-in-the-district-of-columbia/> (accessed February 28, 2021).

<sup>609</sup> Code of the District of Columbia § 5-1105, <https://code.dccouncil.us/dc/council/code/sections/5-1105.html> (accessed February 26, 2021).

<sup>610</sup> Code of the District of Columbia §§ 5-1104(d) to 5-1104(d-3), <https://code.dccouncil.us/dc/council/code/sections/5-1104.html> (accessed February 26, 2021). See: Office of Police Complaints, Policy Recommendations <https://policecomplaints.dc.gov/page/policy-recommendations> (accessed February 26, 2021).

<sup>611</sup> District of Columbia Municipal Regulations, Chapter 6-A21, § 2105, <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/OPC%20Admin%20Rules.%20Published%2012.15.17.pdf> (accessed February 25, 2021).

<sup>612</sup> The President’s Task Force on 21st Century Policing, *Final Report* (Washington, DC: United States Department of Justice Office of Community Oriented Policing Services, May 2015), 15 (Action Item 1.5.1), [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>613</sup> Justin Lawrence, “CPAC Plan Would Cut \$600 Million from Chicago Police Budget, as Aldermen Debate Civilian Oversight of Cops,” *Block Club Chicago*, January 6, 2021, <https://blockclubchicago.org/2021/01/06/cpac-plan-would-cut-600-million-from-chicago-police-budget-as-aldermen-debate-civilian-oversight-of-cops/> (accessed February 26, 2021). The idea for a police commission originated with a recommendation the Chicago Police Accountability Task Force made in 2016. See: Chicago Police Accountability Task Force, *Recommendations for Reform: Restoring Trust between the Chicago Police and the Communities They Serve* (Chicago, IL: Chicago Police Accountability Task Force, April 2016), 68-69, [https://chicagopatf.org/wp-content/uploads/2016/04/PATF\\_Final\\_Report\\_4\\_13\\_16-1.pdf](https://chicagopatf.org/wp-content/uploads/2016/04/PATF_Final_Report_4_13_16-1.pdf) (accessed February 26, 2021).

<sup>614</sup> Mecole Jordan-McBride, New York University School of Law Policing Project advocacy director, meeting with the DC Police Reform Commission, December 17, 2020.

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<sup>615</sup> Id.

<sup>616</sup> MPD GO-RAR-901.07 (Use of Force), § III.8-9, effective November 3, 2017, [https://go.mpdconline.com/GO/GO\\_901\\_07.pdf](https://go.mpdconline.com/GO/GO_901_07.pdf) (accessed February 14, 2021).

<sup>617</sup> Code of the District of Columbia §§ 5-1101 to 5-1115, <https://code.dccouncil.us/dc/council/code/titles/5/chapters/11/subchapters/I/> (accessed February 25, 2021). An individual with “personal knowledge” is an alleged victim, any individual with personal knowledge of alleged misconduct, or the parent, legal guardian, or legal representative of either. District of Columbia Municipal Regulations, Chapter 6-A21, § 2105, <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/OPC%20Admin%20Rules.%20Published%2012.15.17.pdf>.

<sup>618</sup> District of Columbia Police Complaints Board-Office of Police Complaints, *Annual Report*, 18, [https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/2020%20Annual%20Report\\_Final.pdf](https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/2020%20Annual%20Report_Final.pdf) (accessed February 21, 2021).

<sup>619</sup> District of Columbia Municipal Regulations, Chapter 6-A21, § 2110, <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/OPC%20Admin%20Rules.%20Published%2012.15.17.pdf>.

<sup>620</sup> District of Columbia Police Complaints Board-Office of Police Complaints, *Annual Report*, 19, [https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/2020%20Annual%20Report\\_Final.pdf](https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/2020%20Annual%20Report_Final.pdf) (accessed February 26, 2021).

<sup>621</sup> Code of the District of Columbia § 5-1106(c), <https://code.dccouncil.us/dc/council/code/sections/5-1106.html> (accessed February 26, 2021).

<sup>622</sup> Code of the District of Columbia §§ 5-1111(i), <https://code.dccouncil.us/dc/council/code/sections/5-1111.html> (accessed February 26, 2021).

<sup>623</sup> Code of the District of Columbia §§ 5-1112(c), 5-1112(g)(2), <https://code.dccouncil.us/dc/council/code/sections/5-1112.html> (accessed February 26, 2021).

<sup>624</sup> Code of the District of Columbia § 5-1112(h), <https://code.dccouncil.us/dc/council/code/sections/5-1112.html> (accessed February 26, 2021).

<sup>625</sup> Pew Research Center, *Majority of Public Favors Giving Civilians the Power to Sue Police Officers for Misconduct* (July 9, 2020), <https://www.pewresearch.org/politics/2020/07/09/majority-of-public-favors-giving-civilians-the-power-to-sue-police-officers-for-misconduct/>.

<sup>626</sup> Id.

<sup>627</sup> If the District adopts this Commission recommendation, it should change the name of the Office of Police Complaints to make it clear that the office’s investigations do not stem solely from public complaints.

<sup>628</sup> Municipal Code of Chicago § 2-78-120, [https://codelibrary.amlegal.com/codes/chicago/latest/chicago\\_il/0-0-0-2443800](https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443800) (accessed February 14, 2021).

<sup>629</sup> Chicago Police Department GO3-02-08 (Department Review of Use of Force), §§ II and V.D, effective January 27, 2021, <http://directives.chicagopolice.org/directives/data/a7a57b9b-15f2592c-33815-f25c-63b922690a1aba22.pdf?hl=true> (accessed February 14, 2021).

<sup>630</sup> Seattle Police Department Manual 8.500 (Reviewing Use of Force), § 8.500-POL-4, effective September 15, 2019, <https://www.seattle.gov/police-manual/title-8---use-of-force/8500---reviewing-use-of-force#8.500POL4> (accessed February 14, 2021); Seattle Police Department Force Investigation Unit Procedural Manual, at 54-56, effective September 15, 2019, [http://www.seattle.gov/Documents/Departments/Police/manual/FIT\\_Manual\\_9\\_15\\_19.pdf](http://www.seattle.gov/Documents/Departments/Police/manual/FIT_Manual_9_15_19.pdf) (accessed February 14, 2021); City of

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Seattle Police Accountability Ordinance 125315, §§ 3.29.100-125 (June 1, 2017), [https://www.seattle.gov/Documents/Departments/OPA/Legislation/2017AccountabilityOrdinance\\_052217.pdf](https://www.seattle.gov/Documents/Departments/OPA/Legislation/2017AccountabilityOrdinance_052217.pdf).

<sup>631</sup> MPD policy defines serious use of force as all firearm discharges, with the exception of range and training incidents, and discharges at animals; uses of force resulting in serious physical injury; head strikes with an impact weapon; uses of force resulting in a loss of consciousness, or that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; incidents involving MPD canine bites; uses of force involving the use of neck restraints or techniques intended to restrict a subject's ability to breathe; and all other uses of force resulting in death. It defines serious physical injury as "any injury or illness that results in admission to the hospital or that creates a substantial risk of death, serious disfigurement, loss of consciousness, disability, a broken bone, or protracted loss or impairment of the functioning of any body part or organ. MPD GO-RAR-901.07 (Use of Force), § III.8-9, effective November 3, 2017, [https://go.mpdonline.com/GO/GO\\_901\\_07.pdf](https://go.mpdonline.com/GO/GO_901_07.pdf) (accessed February 14, 2021).

<sup>632</sup> Michael Tobin, executive director, Office of Police Complaints, meeting with the DC Police Reform Commission, November 23, 2020; Michael Tobin, executive director, Office of Police Complaints, email to the DC Police Reform Commission, January 21, 2021.

<sup>633</sup> Code of the District of Columbia § 5-1102 (emphasis added), <https://code.dccouncil.us/dc/council/code/sections/5-1102.html> (accessed February 14, 2021).

<sup>634</sup> MPD GO-PER-120.25 (Processing Complaints against Metropolitan Police Department Members), § II, effective October 27, 2017, [https://go.mpdonline.com/GO/GO\\_120\\_25.pdf](https://go.mpdonline.com/GO/GO_120_25.pdf) (accessed February 14, 2021).

<sup>635</sup> Testimony of Monica Hopkins, executive director, American Civil Liberties Union of the District of Columbia, DC Council Committee on the Judiciary and Public Safety, Hearing on Bill 23-992, the "Comprehensive Policing and Justice Reform Amendment Act of 2020," October 15, 2020, <https://www.acludc.org/en/legislation/aclu-dc-testifies-dc-council-committee-comprehensive-police-and-justice-reform-amendment> (last accessed February 18, 2021). See also: Testimony of Katerina Semyonova, Special Counsel to the Director on Policy and Legislation, Public Defender Service for the District of Columbia, concerning "The Comprehensive Policing and Justice Amendment Act of 2020," October 15, 2020, 4.

<sup>636</sup> Rules of the New York City Civilian Complaint Review Board, Title 38-A, Subchapter B, § 1-11, <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCRules/0-0-0-78597> (accessed February 14, 2021); San Francisco Office of Police Accountability, Complaints, <https://sfgov.org/dpa/complaints> (accessed February 14, 2021); Seattle Office of Police Accountability, Complaints, Anonymous Complaint Form, <https://www.seattle.gov/opa/complaints/file-a-complaint/anonymous-complaint-form> (accessed February 13, 2021).

<sup>637</sup> Testimony of Monica Hopkins, executive director, American Civil Liberties Union of the District of Columbia, DC Council Committee on the Judiciary and Public Safety, Hearing on Bill 23-992, the "Comprehensive Policing and Justice Reform Amendment Act of 2020," October 15, 2020, <https://www.acludc.org/en/legislation/aclu-dc-testifies-dc-council-committee-comprehensive-police-and-justice-reform-amendment> (last accessed February 18, 2021). See also: Testimony of Katerina Semyonova, Special Counsel to the Director on Policy and Legislation, Public Defender Service for the District of Columbia, concerning "The Comprehensive Policing and Justice Amendment Act of 2020," October 15, 2020, 4.

<sup>638</sup> The emergency legislation empowers OPC to investigate evidence of abuse or misuse of police powers not alleged by the complainant in the complaint. It cites the following examples: failure to intervene in or report excessive use of force; failure to report to a supervisor another officer's police violations; and failure to report use of force. District of Columbia Act 23-336, Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020, Subtitle C, § 105(b), <https://code.dccouncil.us/dc/council/acts/23-336.html> (accessed February 21, 2021).

<sup>639</sup> See District of Columbia Municipal Regulations, Chapter 6A §§ 1100.1 to 1110.1, <https://securityofficerhq.com/files/dc-title-6a.pdf> (accessed March 13, 2021).

<sup>640</sup> See District of Columbia Municipal Regulations, Chapter 6A §§ 1200.1 to 1208.1, <https://securityofficerhq.com/files/dc-title-6a.pdf> (accessed March 13, 2021).

<sup>641</sup> See District of Columbia Office of Police Complaints, "Police Complaints Board Releases Report on Discipline of DC Police Officers," press release, October 14, 2020, <https://policecomplaints.dc.gov/release/police-complaints-board-releases-report-discipline-dc-police-officers> (last accessed February 14, 2021); Michael Tobin, executive director, Office of Police Complaints, meeting with the DC Police Reform Commission, October 29, 2020.

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<sup>642</sup> Municipal Code of Chicago §§ 2-78-120(k)-(l) and 2-78-130, [https://codelibrary.amlegal.com/codes/chicago/latest/chicago\\_il/0-0-0-2443800](https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443800) (accessed February 14, 2021).

<sup>643</sup> Municipal Code of Chicago § 2-78-130, [https://codelibrary.amlegal.com/codes/chicago/latest/chicago\\_il/0-0-0-2443800](https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443800) (accessed February 14, 2021); District of Columbia Office of Police Complaints, Policy Recommendations, <https://code.dccouncil.us/dc/council/code/sections/5-1104.html> (accessed March 1, 2021).

<sup>644</sup> Id.; Chicago Police Board, Police Discipline, [https://www.chicago.gov/city/en/depts/cpb/provdrs/police\\_discipline.html](https://www.chicago.gov/city/en/depts/cpb/provdrs/police_discipline.html) (accessed February 14, 2021).

<sup>645</sup> Code of the District of Columbia § 5-1104(d), <https://code.dccouncil.us/dc/council/code/sections/5-1104.html> (accessed February 26, 2021).

<sup>646</sup> Michael Tobin, executive director, Office of Police Complaints, meeting with the DC Police Reform Commission, October 29, 2020.

<sup>647</sup> Chicago Office of Police Accountability, FAQs, Transition to COPA, <https://www.chicagocopa.org/faqs/> (accessed February 14, 2021).

<sup>648</sup> Michael Tobin, executive director, Office of Police Complaints, meeting with the DC Police Reform Commission, October 29, 2020; Rochelle Howard, former deputy director, Office of Police Complaints, meeting with the DC Police Reform Commission, December 3, 2020; Michael Tobin, executive director, Office of Police Complaints, email to the DC Police Reform Commission, February 26, 2021.

<sup>649</sup> See District of Columbia Office of Police Complaints, Decisions, <https://policecomplaints.dc.gov/page/complaint-examiner-decisions> (accessed February 14, 2021). The Commission examined each decision to ascertain the complaint date and closure date; the Commission obtained complaint dates not included in some decisions directly from the OPC. Michael Tobin, executive director, Office of Police Complaints, email to the DC Police Reform Commission, January 5, 2021.

<sup>650</sup> See Municipal Code of Chicago, § 2-78-105, [https://codelibrary.amlegal.com/codes/chicago/latest/chicago\\_il/0-0-0-2443800](https://codelibrary.amlegal.com/codes/chicago/latest/chicago_il/0-0-0-2443800) (accessed February 14, 2021); City of Miami Code of Ordinances § 11.5-35, [https://library.municode.com/fl/miami/codes/code\\_of\\_ordinances?nodeId=PTIITHCO\\_CH11.5CICOINRE](https://library.municode.com/fl/miami/codes/code_of_ordinances?nodeId=PTIITHCO_CH11.5CICOINRE) (accessed February 14, 2021); New York City Charter Chapter 18-A, § 440(g), <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCcharter/0-0-0-1641> (accessed February 14, 2021); Oakland City Charter § 604(e)(4), [https://library.municode.com/ca/oakland/codes/code\\_of\\_ordinances?nodeId=THCHOA](https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA) (accessed February 14, 2021); San Francisco City Charter § 4.136(c), [https://codelibrary.amlegal.com/codes/san\\_francisco/latest/sf\\_charter/0-0-0-52612#ID\\_4.136](https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_charter/0-0-0-52612#ID_4.136) (accessed February 14, 2021).

<sup>651</sup> Prosecutors are free to show body-worn camera recordings to officers and other witnesses as they see fit.

<sup>652</sup> Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* (Washington, DC: United States Department of Justice Community Oriented Policing Services, 2014), 29-30, <https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf> (accessed February 15, 2021).

<sup>653</sup> Id., 45.

<sup>654</sup> Donald Dawes, et al, “Body Worn Cameras Improve Law Enforcement Officer Report Writing Accuracy,” *Journal of Law Enforcement*, Issue 2161-0231 (2015), 7-8, 15, [http://wbcitizensvoice.com/pdfs/BodyCam\\_writing.pdf](http://wbcitizensvoice.com/pdfs/BodyCam_writing.pdf) (accessed February 15, 2021).

<sup>655</sup> Id., 10.

<sup>656</sup> Brittany Blaskovits and Craig Bennell, “Exploring the Potential Impact of Body Worn Cameras on Memory in Officer-Involved Critical Incidents: a Literature Review,” *Journal of Police and Criminal Psychology*, 35(3) (2020), 255-259, <https://link.springer.com/article/10.1007%2Fs11896-019-09354-1> (accessed February 15, 2021).

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<sup>657</sup> Joel M. Schumm, *Policing Body Cameras: Policies and Procedures to Safeguard the Rights of the Accused*, (National Association of Criminal Defense Lawyers, 2017), 24, <https://www.nacdl.org/getattachment/4163cc7b-1f4e-4e6c-9a60-a76794390d94/policing-body-cameras-policies-and-procedures-to-safeguard-the-rights-of-the-accused.pdf> (accessed February 15, 2021).

<sup>658</sup> Id.

<sup>659</sup> LAPD Manual, Volume 3, § 792.05, [https://www.lapdonline.org/lapd\\_manual/volume\\_3.htm#504](https://www.lapdonline.org/lapd_manual/volume_3.htm#504) (accessed February 15, 2021); NYPD PG 212-123 (Use of Body-Worn Cameras), § 25, effective October 7, 2020, [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/public-pguide2.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide2.pdf) (accessed February 15, 2021); New York City Police Department, *Use of Force Report 2019*, 6, <https://www1.nyc.gov/assets/nypd/downloads/pdf/use-of-force/use-of-force-2019-2020-11-03.pdf> (accessed February 15, 2021). ; Seattle Police Department Manual 16.090-POL 2.3 (Recording with ICV and BWV), effective October 1, 2020, <https://www.seattle.gov/police-manual/title-16---patrol-operations/16090---in-car-and-body-worn-video> (accessed February 15, 2021); SPD Manual 8.050 (Use of Force Definitions), Effective June 19, 2020. <http://www.seattle.gov/police-manual/title-8---use-of-force/8050---use-of-force-definitions> (accessed February 15, 2021).

<sup>660</sup> Code of the District of Columbia § 5-1109, <https://code.dccouncil.us/dc/council/code/sections/5-1109.html> (accessed February 15, 2021).

<sup>661</sup> Office of the District of Columbia Auditor, *The Durability of Police Reform: The Metropolitan Police Department and Use of Force 2008-2015* (January 28, 2016), 60, <https://dcauditor.org/report/the-durability-of-police-reform-the-metropolitan-police-department-and-use-of-force-2008-2015/>.

<sup>662</sup> See Kelly O'Meara, executive director, MPD Strategic Change Division, email to the DC Police Reform Commission, March 7, 2021; Office of the District of Columbia Auditor, *Implementation of Recommendations for The Durability of Police Reform: The Metropolitan Police Department and Use of Force 2008-2015* (March 20, 2017), 6-7,

<https://dcauditor.org/report/the-durability-of-police-reform-the-metropolitan-police-department-and-use-of-force-2008-2015/>.

<sup>663</sup> Michael Tobin, executive director, Office of Police Complaints, meeting with the DC Police Reform Commission, October 29, 2020; Gregory Pemberton, chairman, DC Police Union, meeting with the DC Police Reform Commission, January 21, 2021.

<sup>664</sup> See United States Department of Justice Office of Community Oriented Policing Services, *Standards and Guidelines For Internal Affairs: Recommendations from a Community of Practice*, 24, <https://cops.usdoj.gov/RIC/Publications/cops-p164-pub.pdf>.

<sup>665</sup> Id., 25.

<sup>666</sup> See *Garrity v. New Jersey*, 385 U.S. 493, 449-500 (1967); *Kastigar v. United States*, 406 U.S. 441, 453 (1972). This advisement is familiarly known as a “Garrity warning.”

<sup>667</sup> *Kastigar v. United States*, 406 U.S. 441, 460 (1972). These hearings are known as “Kastigar hearings.”

<sup>668</sup> Marvin Haiman, executive director, MPD Professional Development Bureau, meeting with the DC Police Reform Commission, November 19, 2020.

<sup>669</sup> Gregory Permberton, chairman, DC Police Union, meeting with the DC Police Reform Commission, January 21, 2021.

<sup>670</sup> The clock is tolled during the pendency of criminal investigations and, with respect to OPC investigations, is tolled until OPC concludes its investigation. Code of the District of Columbia § 5-1031, <https://code.dccouncil.us/dc/council/code/sections/5-1031.html> (accessed February 15, 2021).

<sup>671</sup> New York Civil Service Law § 75(4), <https://www.nysenate.gov/legislation/laws/CSV/75> (last accessed February 15, 2021); California Government Code § 3304(d)(1), [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=GOV&division=4.&title=1.&part=&chapter=9.7.&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=GOV&division=4.&title=1.&part=&chapter=9.7.&article=) (accessed February 15, 2021); Maryland Code, Public Safety § 3-106, <https://casetext.com/statute/code-of-maryland/article-public-safety/title-3-law-enforcement/subtitle-1-law-enforcement-officers-bill-of-rights/section-3-106-limitation-on-administrative-charges> (accessed February 19, 2021).

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<sup>672</sup> Chairman Phil Mendelson, “Amendment to Comprehensive Policing and Justice Reform Emergency Amendment Act of 2020,” B23-0774, June 9, 2020, 2, <https://lms.dccouncil.us/downloads/LIMS/45107/Meeting1/Amendment/B23-0774-Amendment1.pdf> (accessed February 24, 2021).

<sup>673</sup> See Stephen Rushin, “Police Disciplinary Appeals,” *University of Pennsylvania Law Review* 167, no. 3 (February 2019): 580, [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9652&context=penn\\_law\\_review](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9652&context=penn_law_review) (accessed February 26, 2021); Kimbriell Kelly, Wesley Lowery, and Steven Rich, “Fired/Rehired: Police Chiefs are Often Forced to Put Officers Fired for Misconduct Back on the Streets,” *Washington Post*, August 3, 2017, <https://www.washingtonpost.com/graphics/2017/investigations/police-fired-rehired/> (accessed February 20, 2021).

<sup>674</sup> MPD GO-PER-120.21 (Disciplinary Process and Procedures), § VI.B, effective April 13, 2006, [https://go.mpdonline.com/GO/120\\_21re.pdf](https://go.mpdonline.com/GO/120_21re.pdf) (accessed February 20, 2021).

<sup>675</sup> *Id.*

<sup>676</sup> *Id.*, § VI.G.

<sup>677</sup> *Id.*, § VI.H.

<sup>678</sup> Collective Bargaining Agreement between the District of Columbia Government, Metropolitan Police Department, and the DC Police Union (Fraternal Order of Police/Metropolitan Police Department (FOP/MPD Labor Committee), effective October 1, 2017 through September 30, 2020, Article 12, § 3. While expired, this CBA remains in effect. *Id.*, Article 48 § 4.

<sup>679</sup> *Id.*, Article 12, § 8 and Article 19.A. § 1. The CBA allows either party to appeal the arbitrator’s decision to the Public Employees Relations Board for reasons that show that the arbitrator did not have jurisdiction or authority for the decision; the decision was contrary to law and public policy; or the decision was procured by fraud, collusion, or other similar or unlawful means. *Id.*, Article 19.A. § 6.

<sup>680</sup> Gregory Pemberton, chairman, DC Police Union, meeting with the DC Police Reform Commission, January 21, 2021.

<sup>681</sup> The OEA serves as an administrative tribunal; its proceedings are generally public, its decisions are public, and officers’ names are not redacted from the decisions. See District of Columbia Municipal Regulations, Chapter 6B-6, § 624.5, <https://oea.dc.gov/sites/default/files/dc/sites/oea/publication/attachments/Notice%20of%20Final%20Ruling.pdf> (accessed February 20, 2021); District of Columbia Office of Employee Appeals, <https://oea.dc.gov> (accessed February 20, 2021). Gregg Pemberton told the Commission that the OEA would be overwhelmed if officers could not challenge discipline through arbitration; and that as District employees, the administrative law judges are not truly independent, as arbitrators are. Gregory Pemberton, chairman, DC Police Union, meeting with the DC Police Reform Commission, January 21, 2021.

<sup>682</sup> Fraternal Order of Police v. District of Columbia, Civil Action No. 20-2130 (DC November 4, 2020), 6-9, <https://law.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2020cv02130/220703/16/> (accessed February 20, 2021).

<sup>683</sup> Stephen Rushin, “Police Disciplinary Appeals,” *University of Pennsylvania Law Review* 167, no. 3 (February 2019): 597, [https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9652&context=penn\\_law\\_review](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=9652&context=penn_law_review).

<sup>684</sup> Rushin, “Police Disciplinary Appeals,” 579, 570-587.

<sup>685</sup> Collective Bargaining Agreement, Article 19A § 5.

<sup>686</sup> Rushin, “Police Disciplinary Appeals,” 576.

<sup>687</sup> *Id.*, 553.

<sup>688</sup> *Id.*, 580. See: Kimbriell Kelly, Wesley Lowery, and Steven Rich, “Fired/Rehired: Police Chiefs are Often Forced to Put Officers Fired for Misconduct Back on the Streets,” *Washington Post*, August 3, 2017, <https://www.washingtonpost.com/graphics/2017/investigations/police-fired-rehired/> (accessed February 20, 2021).

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<sup>689</sup> Kelly, Lowery, and Rich, “Fired/Rehired: Police Chiefs are Often Forced to Put Officers Fired for Misconduct Back on the Streets.”

<sup>690</sup> Kim Barker, Michael H. Keller, and Steve Eder, “How Cities Lost Control of Police Discipline,” *The New York Times*, December 22, 2020, <https://www.nytimes.com/2020/12/22/us/police-misconduct-discipline.html> (accessed February 20, 2021).

<sup>691</sup> Peter Newsham, former Chief of the Metropolitan Police Department, meeting with the DC Police Reform Commission, September 4, 2020.

<sup>692</sup> Kelly, Lowery, and Rich, “Fired/Rehired: Police Chiefs are Often Forced to Put Officers Fired for Misconduct Back on the Streets.”

<sup>693</sup> MPD GOC-PER-120.21 (Disciplinary Process and Procedures), effective April 26, 2017, [https://go.mpdconline.com/GO/GOC\\_17\\_01.pdf](https://go.mpdconline.com/GO/GOC_17_01.pdf) (accessed February 20, 2021); MPD EO 20-003 (Disciplinary Procedure Update), effective January 10, 2020, [https://go.mpdconline.com/GO/EO\\_20\\_003.pdf](https://go.mpdconline.com/GO/EO_20_003.pdf) (accessed February 20, 2021).

<sup>694</sup> Collective Bargaining Agreement, Article 48 § 5.

<sup>695</sup> Douglas v. Veterans Administration, 5 M.S.P.B. 313, 331-332 (1981), <https://www.mspb.gov/mspbsearch/viewdocs.aspx?docnumber=253434&version=253721&application=ACROBAT> (accessed February 20, 2021). The United States Merit Systems Protection Board set forth these factors, which the District of Columbia has adopted.

<sup>696</sup> Marvin Haiman, executive director, MPD Professional Development Bureau, email to the DC Police Reform Commission, February 1, 2021.

<sup>697</sup> Marvin Haiman, executive director, MPD Professional Development Bureau, email to the DC Police Reform Commission, January 13, 2021.

<sup>698</sup> Marvin Haiman, executive director, MPD Professional Development Bureau, email to the DC Police Reform Commission, January 13, 2021.

<sup>699</sup> Nikhel Sus, “States Must Lift the Veil of Secrecy over Police Misconduct,” *Citizens for Responsibility & Ethics in Washington*, June 19, 2020, <https://www.citizensforethics.org/reports-investigations/crew-investigations/states-secrecy-police-misconduct-reform/> (accessed February 20, 2021).

<sup>700</sup> The NYPD seals a command discipline schedule A after one year, provided the officer has no subsequent disciplinary violations during that year. Upon an officer’s request, it will seal a command discipline schedule B, which is more serious than level A, after three years, if the officer has not been subject to additional command disciplines schedule B or charges and specifications. NYPD PG § 206.2 (Schedule “A” and Schedule “B” Command Disciplines), effective April 20, 2017; PG § 206.14(1-5) (Sealing Disciplinary Records), effective June 1, 2020, [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/public-pguide1.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf) (accessed March 1, 2021).

<sup>701</sup> MPD GO-PER-120.21 (Disciplinary Process and Procedures), § VI.B-G, [https://go.mpdconline.com/GO/120\\_21re.pdf](https://go.mpdconline.com/GO/120_21re.pdf).

<sup>702</sup> MPD GO-PER-201.19 (Employee Personnel Records), § IV.7, effective November 23, 2011, [https://go.mpdconline.com/GO/GO\\_201\\_19.pdf](https://go.mpdconline.com/GO/GO_201_19.pdf) (accessed February 20, 2021).

<sup>703</sup> Robert Lewis, Noah Veltman, and Xander Landen, “Is Police Misconduct a Secret in Your State?,” *WNYC News*, October 15, 2015, <https://www.wnyc.org/story/police-misconduct-records/> (accessed February 22, 2021).

<sup>704</sup> Liam Dillon and Maya Lau, “Gov. Jerry Brown Signs Landmark Laws that Unwind Decades of Secrecy Surrounding Police Misconduct, Use of Force,” *Los Angeles Times*, September 30, 2018, <https://www.latimes.com/politics/la-pol-ca-police-misconduct-rules-changed-20180930-story.html> (accessed February 22, 2021). California provided the public access to investigative records, files, and findings relating to: 1) incidents involving the discharge of a firearm; 2) incidents involving the use of force that resulted in death or great bodily injury; 3) sustained findings involving sexual assault; and 4) sustained findings involving dishonesty in connection with the reporting, investigation, or prosecution of a crime, or with the investigation of another officer’s alleged

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misconduct, including any sustained finding of perjury, false statements, filing false reports, and destruction, falsifying, or concealing of evidence. CA Penal Code, Part 2 of Criminal Procedure, Title 3, Chapter 4.5 § 832.7(b)(1),

[https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=832.7&lawCode=PEN](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=832.7&lawCode=PEN) (accessed March 1, 2021).

<sup>705</sup> Denis Slattery, “New York Lawmakers Vote to Repeal 50-a, Making Police Disciplinary Records Public,” *New York Daily News*, June 10, 2020,

<https://www.nydailynews.com/news/politics/ny-legislature-50a-transparency-george-floyd-20200609-view7soogazfmdg3cr3xslsbmwye-story.html> (accessed February 22, 2021).

<sup>706</sup> The President’s Task Force on 21st Century Policing, *Final Report*, (United States Department of Justice Office of Community Oriented Policing Services, May 2015), 1.

<sup>707</sup> *Id.*, 12.

<sup>708</sup> Chris Magnus, Chief, Tucson Police Department, meeting with the DC Police Reform Commission December 14, 2020.

<sup>709</sup> Mitch Ryals, “DC Office of Police Complaints’ Records Leave Much to be Desired,” *Washington City Paper*, September 3, 2020, <https://washingtoncitypaper.com/article/308805/d-c-office-of-police-complaints-records-leave-much-to-be-desired/> (accessed February 23, 2021); Mitch Ryals, “How the DC Police Department, DOJ, and DC Attorney General’s Office Shield Cops’ Bad Acts,” *Washington City Paper*, June 25, 2020, <https://washingtoncitypaper.com/article/304093/how-the-dc-police-department-doj-and-dc-attorney-generals-office-shield-the-bad-actions-of-cops/> (chronicling an attorney’s struggle to obtain transcripts of public adverse action hearings). See Code of the District of Columbia §§ 2-534(a)(2) and 2-534(a)(3)(C). <https://code.dccouncil.us/dc/council/code/sections/2-534.html> (accessed February 23, 2021).

<sup>710</sup> In Arizona, where Chris Magnus serves as chief, the public has access to all records relating to final (post-appeal) disciplinary actions. Arizona Revised Statutes § 39-128, <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/39/00128.htm> (accessed February 22, 2021); Arizona Revised Statutes 38-1109, <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/38/01109.htm> (accessed February 22, 2021). Arizona defines a disciplinary action as a dismissal, demotion, or suspension resulting from misconduct or unsatisfactory performance. Investigative file means the law enforcement agency’s complete report and any attachments detailing the incidents leading to the disciplinary action, including complaints, audio and video recordings, photographs, witness statements, and exculpatory and mitigating evidence. Arizona Revised Statutes §§ 38-1101(3), (6), <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/38/01101.htm> (accessed February 22, 2021).

<sup>711</sup> Florida Statutes § 119.071(1)(k), [http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0100-0199/0119/Sections/0119.071.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0119/Sections/0119.071.html) (accessed February 22, 2021).

<sup>712</sup> Minnesota Statutes § 13.43(4-5), <https://www.revisor.mn.gov/statutes/cite/13.43> (accessed February 22, 2021).

<sup>713</sup> Walker and Archbold, *The New World of Police Accountability*, 161.

<sup>714</sup> New York S08496/A08674-A, [https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=S08496&term=2019&Summary=Y&Text=Y](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=S08496&term=2019&Summary=Y&Text=Y) (accessed February 23, 2021). New York Civil Rights Law 50-a (repealed), <https://codes.findlaw.com/ny/civil-rights-law/cvr-sect-50-a.html> (accessed February 23, 2021). Under the now repealed law, law enforcement personnel records were subject to inspection only with the written consent of the officer or pursuant to court order, with the exception of prosecutors, the attorney general, and corporation counsels.

<sup>715</sup> *Uniformed Fire Officers Association v. Bill de Blasio*, 20-Civ. 05441, 6-7 (August 31, 2020).

<sup>716</sup> *Id.*, 42.

<sup>717</sup> *Uniformed Fire Officers Association v. Bill de Blasio*, 20-2789-cv, 6 (February 16, 2021), <https://www.courthousenews.com/wp-content/uploads/2021/02/nypd-discipline-ca2.pdf>.

<sup>718</sup> New York City Civilian Complaint Review Board, “NYPD Member of Service Histories,” <https://www1.nyc.gov/site/ccrb/policy/MOS-records.page> (accessed March 4, 2021).

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<sup>719</sup> New York Police Department, “Officer Profile,” NYPD Online, <https://nypdonline.org/link/2> (accessed March 13, 2021); “Trial Decisions Library,” NYPD Online, <https://nypdonline.org/link/1016> (accessed March 13, 2021).

<sup>720</sup> ProPublica, “The NYPD Files,” <https://projects.propublica.org/nypd-ccrb/> (accessed February 23, 2021); New York Civil Liberties Union, “NYPD Misconduct Complaint Database,” <https://www.nyclu.org/en/campaigns/nypd-misconduct-database> (accessed February 23, 2021).

<sup>721</sup> New York Public Officers Law § 89(2-c), <https://www.nysenate.gov/legislation/laws/PBO/89>.

<sup>722</sup> Marvin Haiman, executive director, MPD Professional Development Bureau, meeting with the DC Police Reform Commission, November 19, 2020; MPD GO-PER-120.21 (Disciplinary Process and Procedures), § VI.J. According to the directive, the MPD may also conduct an adverse action hearing in cases other than those where termination is proposed, at the discretion of the assistant chief of the Office of Human Services, an office that no longer exists.

<sup>723</sup> Marvin Haiman, executive director, MPD Professional Development Bureau, meeting with the DC Police Reform Commission, November 19, 2020; Mitch Ryals, “How the DC Police Department, DOJ, and DC Attorney General’s Office Shield Cops’ Bad Acts,” *Washington City Paper* (June 25, 2020), <https://washingtoncitypaper.com/article/304093/how-the-dc-police-department-doj-and-dc-attorney-generals-office-shield-the-bad-actions-of-cops/> (accessed February 21, 2021).

<sup>724</sup> Marvin Haiman, executive director, MPD Professional Development Bureau, meeting with the DC Police Reform Commission, November 19, 2020.

<sup>725</sup> Mitch Ryals, “How the DC Police Department, DOJ, and DC Attorney General’s Office Shield Cops’ Bad Acts.”

<sup>726</sup> District of Columbia Police Complaints Board-Office of Police Complaints, *Annual Report 2020*, 19, [https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/2020%20Annual%20Report\\_Final.pdf](https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/2020%20Annual%20Report_Final.pdf) (accessed February 21, 2021).

<sup>727</sup> *Id.*, 33-34.

<sup>728</sup> Code of the District of Columbia § 5-1032, <https://code.dccouncil.us/dc/council/code/sections/5-1032.html> (accessed February 21, 2021).

<sup>729</sup> See: Axon Enterprise Inc., “Axon Signal Sidearm,” <https://www.axon.com/products/axon-signal-sidearm> (accessed March 15, 2021).

<sup>730</sup> District of Columbia Police Complaints Board-Office of Police Complaints, *Report on Use of Force by the Washington, DC Metropolitan Police Department 2019*, 17, [https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/UOF%20Report%202019\\_FINAL.pdf](https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/UOF%20Report%202019_FINAL.pdf) (accessed March 10, 2021).

<sup>731</sup> Metropolitan Police Department, *A Report on MPD’s Use of Body-Worn Cameras January 1-June, 2019*, [https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/BWC%20Report%201H%202019%20for%20data%20from%201-1%20to%206-30%202019\\_UPDATE\\_11%2005%2019.pdf](https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/BWC%20Report%201H%202019%20for%20data%20from%201-1%20to%206-30%202019_UPDATE_11%2005%2019.pdf) (accessed March 18, 2021).

<sup>732</sup> Metropolitan Police Department, *A Report on MPD’s Use of Body-Worn Cameras January 1-June, 2020*, [https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/BWC%20Report\\_010120\\_063020.pdf](https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/BWC%20Report_010120_063020.pdf) (accessed March 18, 2021).

<sup>733</sup> See: “Gun Drawn, Camera On: New Axon Signal Sidearm Alerts Body Cams from Holster,” *PR Newswire*, <https://www.prnewswire.com/news-releases/gun-drawn-camera-on-new-axon-signal-sidearm-alerts-body-cams-from-holster-300413641.html> (accessed March 18, 2021).

<sup>734</sup> Morse Diggs, “Atlanta police using new holsters that turn on body cam when firearm is drawn,” *FOX5 Atlanta*, August 13, 2019, <https://www.fox5atlanta.com/news/atlanta-police-using-new-holsters-that-turn-on-body-cam-when-firearm-is-drawn> (accessed March 15, 2021).

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<sup>735</sup> Amanda Zhou, “Charlotte police officers now required to report when they draw and point a gun,” *The Charlotte Observer*, August 5, 2020, <https://www.charlotteobserver.com/news/local/article244740102.html> (accessed March 15, 2021).

<sup>736</sup> Cornelius Frolik, “Dayton approves funding for police body cameras, license plate reader technology,” *Dayton.com*, January 21, 2021, <https://www.dayton.com/news/dayton-to-vote-on-police-body-cameras/UWISYBUNLZD2LMUJUL5QYT7AOY/> (accessed March 15, 2021).

<sup>737</sup> See: Recommendation 3(a)(iii) and corresponding discussion for definition of “serious use of force,” which can be found in MPD GO-RAR-901.07 (Use of Force), § III.9, effective November 3, 2017, [https://go.mpdconline.com/GO/GO\\_901\\_07.pdf](https://go.mpdconline.com/GO/GO_901_07.pdf) (accessed February 14, 2021).

<sup>738</sup> Steve Zansberg, “Public Access to Police Body-Worn Camera Recordings (Status Report 2020),” American Bar Association, January 22, 2021, [https://www.americanbar.org/groups/communications\\_law/publications/communications\\_lawyer/fall2020/public-access-police-bodyworn-camera-recordings-status-report-2020/](https://www.americanbar.org/groups/communications_law/publications/communications_lawyer/fall2020/public-access-police-bodyworn-camera-recordings-status-report-2020/) (accessed February 20, 2021).

<sup>739</sup> *Id.*

<sup>740</sup> SPD Manual 1.115-POL (Media Release: Officer-Involved Shooting) §§ 1-7, effective June 1, 2017, <https://www.seattle.gov/police-manual/title-1---department-administration/1115---media-release-officer-involved-shooting> (accessed February 20, 2021) (the SPD will not release video that may compromise an investigation).

<sup>741</sup> LAPD Manual, Volume 1, § 420.55, [https://www.lapdonline.org/lapd\\_manual/volume\\_1.htm#420..NEWS\\_MEDIA\\_RELATIONS](https://www.lapdonline.org/lapd_manual/volume_1.htm#420..NEWS_MEDIA_RELATIONS) (accessed February 20, 2021).

<sup>742</sup> Keith L. Alexander, “DC Judge Denies Police Union Request to Block District’s Decision to Make Public Body Camera Footage, Identity of Officers Who Use Serious Force,” *Washington Post*, August 13, 2020, [https://www.washingtonpost.com/local/public-safety/dc-judge-denies-police-union-request-to-block-districts-decision-to-make-public-body-camera-footage-identity-of-officers-who-use-serious-force/2020/08/13/b5bbec14-dd8c-11ea-809e-b8be57ba616e\\_story.html](https://www.washingtonpost.com/local/public-safety/dc-judge-denies-police-union-request-to-block-districts-decision-to-make-public-body-camera-footage-identity-of-officers-who-use-serious-force/2020/08/13/b5bbec14-dd8c-11ea-809e-b8be57ba616e_story.html) (accessed February 20, 2021). According to the article, the judge said the union “failed to provide any evidence there would be ‘immediate or irreparable harm’ to an officer whose name or body camera footage is made public.” The case, *Fraternal Order of Police v. District of Columbia*, Case 2020 CA003492B, is still pending.

<sup>743</sup> See: Testimony of Elana Suttenger, special counsel to the U.S. Attorney for the District of Columbia, before the DC Council regarding Policing Reform and Proposed Amendment of Rioting Statute, October 15, 2020, <https://www.justice.gov/usao-dc/pr/special-counsel-us-attorney-district-columbia-elana-suttenger-delivers-testimony-dc> (accessed February 21, 2020).

<sup>744</sup> Steve Zansberg, “Public Access to Police Body-Worn Camera Recordings (Status Report 2020).”

<sup>745</sup> Testimony of Monica Hopkins, executive director, ACLU-DC, before the DC Council Committee on the Judiciary and Public Safety, October 15, 2020, <https://www.acludc.org/en/legislation/aclu-dc-testifies-dc-council-committee-comprehensive-police-and-justice-reform-amendment> (accessed February 21, 2020).

<sup>746</sup> See: “Officer-Involved Shooting on Seattle Waterfront,” February 17, 2021, *Seattle Police Department Blotter*, <https://spdblotter.seattle.gov/2021/02/17/officer-involved-shooting-on-seattle-waterfront/> (accessed February 21, 2021); “Update— Detectives Investigating Fatal Officer-Involved Shooting in Licton Springs,” January 3, 2019, *Seattle Police Department Blotter*, <https://spdblotter.seattle.gov/2019/01/03/update-detectives-investigating-fatal-officer-involved-shooting-in-licton-springs/> (accessed February 21, 2021); District of Columbia Metropolitan Police Department, “Community Briefing Videos,” <https://mpdc.dc.gov/node/1483301> (accessed February 21, 2021).

<sup>747</sup> Testimony of Thomas M. Susman, president, DC Open Government Coalition, before the Committee on the Judiciary and Public Safety, October 15, 2020, <https://dcogc.org/blog/coalition-asks-d-c-council-for-permanent-legislation-to-fully-deliver-the-accountability-promise-of-police-body-worn-cameras/>.

<sup>748</sup> Council of the District of Columbia Committee on the Judiciary, *Report on Bill 21-0351, the “Body-Worn Camera Program Amendment Act of 2015,”* (November 19, 2015), 16, [https://lms.dccouncil.us/downloads/LIMS/34469/Committee\\_Report/B21-0351-CommitteeReport1.pdf](https://lms.dccouncil.us/downloads/LIMS/34469/Committee_Report/B21-0351-CommitteeReport1.pdf) (accessed February 21, 2021).

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<sup>749</sup> See: Los Angeles Police Department, YouTube Channel, Devonshire Area OIS 11/01/2020 (NRF052-20), November 6, 2020, <https://www.youtube.com/watch?v=BYk1JkUnl-k> (accessed February 21, 2021).

<sup>750</sup> Colorado S.B. 20-217, [https://leg.colorado.gov/sites/default/files/2020a\\_217\\_signed.pdf](https://leg.colorado.gov/sites/default/files/2020a_217_signed.pdf) (accessed February 21, 2021). In cases depicting a death, the law enforcement agency must provide, upon request, all recordings to the next of kin, who has the right to receive and review the video prior to disclosure.

<sup>751</sup> Kenithia Alston, meeting with the DC Police Reform Commission, December 3, 2020. See also: Georgetown Law, “Marqueese Alston’s Mother Says Release of Edited Police Video of Her Son’s Shooting Death Only Raises New Questions,” press release, July 31, 2020, <https://www.law.georgetown.edu/news/marqueese-alstons-mother-says-release-of-edited-police-video-of-her-sons-shooting-death-only-raises-new-questions/> (accessed February 21, 2020).

<sup>752</sup> District law currently stipulates that the Mayor may, on a case-by-case basis, in matters of significant public interest and after consultation with the Chief of Police, the USAO, and the OAG, publicly release any other body-worn camera recordings that may not otherwise be releasable pursuant to a FOIA request. District of Columbia Municipal Regulations, § 24-3900.10, <http://dcrules.elaws.us/dcmr/24-3900> (accessed February 23, 2021).

<sup>753</sup> See: Testimony of Monica Hopkins, executive director, ACLU-DC, before the DC Council Committee on the Judiciary and Public Safety, October 15, 2020; Testimony of Thomas M. Susman, president, DC Open Government Coalition, before the Committee on the Judiciary and Public Safety, October 15, 2020; Kenithia Alston, meeting with the DC Police Reform Commission, December 3, 2020.

<sup>754</sup> See: Testimony of Monica Hopkins, executive director, ACLU-DC, before the DC Council Committee on the Judiciary and Public Safety, October 15, 2020.

<sup>755</sup> District of Columbia Act 23-336, Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020, Subtitle B, § 103(b)(B)(i), <https://code.dccouncil.us/dc/council/acts/23-336.html> (accessed February 21, 2021).

<sup>756</sup> Thomas Susman, Fritz Mulhauser, Robert Becker, and Miranda Spivak, of the DC Open Government Coalition, meeting with the DC Police Reform Commission, January 29, 2021. See also: Code of the District of Columbia § 2-534.

<sup>757</sup> *Id.*

<sup>758</sup> Testimony of Niquelle Allen, director, DC Office of Open Government, “Improving Access to Body-Worn Camera Video Recordings,” Hearing before the Committee on the Judiciary and Public Safety Committee, October 15, 2020, [https://www.open-dc.gov/Testimony\\_ImprovingAccessToBWC](https://www.open-dc.gov/Testimony_ImprovingAccessToBWC) (accessed February 23, 2021). See also: Niquelle M. Allen, director, DC Office of Open Government, to Fritz Mulhauser, DC Open Government Coalition, November 5, 2020, [https://www.open-dc.gov/BWC\\_FOIA\\_AdvisoryOpinion\\_2020](https://www.open-dc.gov/BWC_FOIA_AdvisoryOpinion_2020) (accessed March 13, 2021).

<sup>759</sup> *Id.*

<sup>760</sup> Thomas Susman, Fritz Mulhauser, Robert Becker, and Miranda Spivak, of the DC Open Government Coalition, meeting with the DC Police Reform Commission, January 29, 2021.

<sup>761</sup> Testimony of Thomas M. Susman, president, DC Open Government Coalition, before the Committee on the Judiciary and Public Safety, October 15, 2020, 3.

<sup>762</sup> *Id.*

<sup>763</sup> MPD GO-SPT-204.05 (Freedom of Information Act Requests), [https://go.mpdonline.com/GO/GO\\_204\\_05.pdf](https://go.mpdonline.com/GO/GO_204_05.pdf) (accessed February 26, 2021).

<sup>764</sup> Testimony of Thomas M. Susman, president, DC Open Government Coalition, before the Committee on the Judiciary and Public Safety, October 15, 2020, 3-4.

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<sup>765</sup> Testimony of Niquelle Allen, director, District of Columbia Office of Open Government, “Five Years of the Metropolitan Police Department’s Body-Worn Camera Program: Reflections and Next Steps,” Committee on the Judiciary Public Oversight Roundtable, October 21, 2019, [https://www.open-dc.gov/sites/default/files/OOG%20Director%20Niquelle%20Allen\\_TESTIMONY\\_MPD%20BODY%20WORN%20CAMERA%20PROGRAM%20.pdf](https://www.open-dc.gov/sites/default/files/OOG%20Director%20Niquelle%20Allen_TESTIMONY_MPD%20BODY%20WORN%20CAMERA%20PROGRAM%20.pdf) (accessed February 26, 2021).

<sup>766</sup> DC Law 21-125, Title II, Subtitle D.

<sup>767</sup> *Coleman v. United States* 194 A.3d 915 (DC 2018).

<sup>768</sup> Council of the District of Columbia Committee on the Judiciary, *Report on Bill 21-0360, the “Neighborhood Engagement Achieves Results Amendment Act of 2016,”* 16-17, [https://lms.dccouncil.us/downloads/LIMS/34496/Committee\\_Report/B21-0360-CommitteeReport1.pdf](https://lms.dccouncil.us/downloads/LIMS/34496/Committee_Report/B21-0360-CommitteeReport1.pdf) (accessed March 23, 2021).

<sup>769</sup> *Bado v. United States*, 186 A.3d 1243, 1264 (DC 2018).

<sup>770</sup> *Weeks v. United States*, 232 U.S. 383 (1914).

<sup>771</sup> *Elkins v. United States*, 364 U.S. 206, 217 (1960).

<sup>772</sup> *Id.* at 222.

<sup>773</sup> *United States v. Calandra*, 414 U.S. 338, 357 (1974) (Brennan, J., dissenting).

<sup>774</sup> *Whren v. United States*, 517 U.S. 806 (1996).

<sup>775</sup> *Id.* at 818.

<sup>776</sup> See generally: Metropolitan Police Department Stop Data Reports (February 22, 2021) (available at <https://mpdc.dc.gov/stopdata>.)

<sup>777</sup> *Pruneda v. State*, 104 S.W.3d 302 (Tex. App., 2003) (offering the following definition: “Racial profiling means a law enforcement-initiated action was based on an individual’s race, ethnicity, or national origin rather than on the individual’s behavior or on information identifying the individual as having engaged in criminal activity.”)

<sup>778</sup> *United States v. Nichols*, 512 F.3d 789 (6th Cir. 2008).

<sup>779</sup> See also: Brooks Holland, *Safeguarding Equal Protection Rights: The Search for an Exclusionary Rule Under the Equal Protection Clause*, 37 Am Crim. L. Rev. 1107 (2000); R. Richard Banks, *Race-Based Suspect Selection and Colorblind Equal Protection Doctrine and Discourse*; Ira Glasser, *Racial Profiling and Selective Enforcement: The New Jim Crow*; Samuel R. Gross & Debra Livingston, *Racial Profiling Under Attack*; David Rudovsky, *Law Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches Without Cause*; Lawrence Rosenthal, *Policing and Equal Protection*; Pamela S. Karlan, *Race, Rights, and Remedies in Criminal Adjudication*, 96 Mich. L. Rev. 2001 (1998); *Reasonable but Unconstitutional: Racial Profiling and the Radical Objectivity of Whren v. United States*, <http://www.gwlr.org/reasonable-but-unconstitutional-racial-profiling-and-the-radical-objectivity-of-whren-v-united-states/>; *Implicit Racial Bias and the Perpetrator Perspective*, <http://www.gwlr.org/wp-content/uploads/2015/07/83-Geo-Wash-L-Rev-1008.pdf>.

<sup>780</sup> *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

<sup>781</sup> See, e.g., *City of Riverside v. Rivera*, 477 U.S. 561, 575 (1986) (plurality opinion); *Carlson v. Green*, 446 U.S. 14, 21 (1980).

<sup>782</sup> See Tr. of Oral Decision, *Horse v. District of Columbia*, No. 1:17-cv-01216 (DC Sept. 27, 2019), at 23; *Mahoney v. District of Columbia*, 662 F. Supp. 2d 74, 94 n.11 (DC 2009).

<sup>783</sup> See: DC Council Comm. on the Judiciary, Report on Bill No. 15-968 at 25 (Dec. 1, 2004) (summarizing testimony to the effect that District statutes can be enforced without an explicit right of action and that a violation would also constitute negligence per se).

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<sup>784</sup> See: Dkt. 1, *Horse v. District of Columbia*, No. 1:17-cv-01216 (DC filed June 21, 2017) (claiming violations of FAAA for unauthorized use of pepper spray, a mass arrest, and failure to issue a dispersal order, among other things); Dkt. 52, *Black Lives Matter DC v. Trump*, No. 1:20-cv-1469 (DC filed Sept. 3, 2020) (amended complaint alleging unauthorized use of pepper spray); ACLU of DC, Wash. Lawyers' Comm. for Civil Rights & Urban Affairs, and Sidley Austin LLP, *Protest During Pandemic* 17 (Mar. 2021).

<sup>785</sup> DC Code § 12-309(a).

<sup>786</sup> DC Code § 12-302(a)(3).

<sup>787</sup> See: Cal. Civ. Proc. Code § 352.1(a) (California); Wash. Rev. Code § 4.16.190 (Washington state).

<sup>788</sup> DC Code § 12-309(a).

<sup>789</sup> See: *Presser v. United States*, 284 F.2d 233, 235 (DC Cir. 1960) (individual who testified in congressional hearing and was later subject to criminal indictment for contempt of Congress “waived the Fifth Amendment privilege, which otherwise would have protected him”).

<sup>790</sup> See: *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 379 (2009).

<sup>791</sup> See: *Mitchell v. Forsyth*, 472 U.S. 511, 535 (1985).

<sup>792</sup> See: e.g., *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (per curiam); *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015) (per curiam); *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2020 (2014); *Scott v. Harris*, 550 U.S. 372, 381 (2007); *Brosseau v. Haugen*, 543 U.S. 194, 198 (2004) (per curiam).

<sup>793</sup> *Kisela*, 138 S. Ct. at 1162 (Sotomayor, J., dissenting).

<sup>794</sup> No. 1:20-cv-1469 (D.DC filed June 4, 2020).

<sup>795</sup> See: William Baude, *Is Qualified Immunity Unlawful?* 106 Calif. L. Rev. 45 (2018).

<sup>796</sup> See: *Baxter v. Bracey*, 140 S. Ct. 1862, 1864 (2020) (Thomas, J., dissenting from denial of certiorari).

<sup>797</sup> *Anderson v. Creighton*, 483 U.S. 635, 641 (1987).

<sup>798</sup> *Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982).

<sup>799</sup> See: *Anderson*, 483 U.S. at 641 n.3.

<sup>800</sup> See: Joanna C. Schwartz, *Police Indemnification*, 89 N.Y.U. L. Rev. 885, 938-40 (2014).

<sup>801</sup> See: Colo. Rev. Stat. Ann. § 13-21-131.

### **Comments of Commissioner Bennett**

<sup>802</sup> See: Jacob Sullum, “New Mexico Could Be the Third State To Authorize Lawsuits Against Abusive Cops Without Qualified Immunity,” *Reason*, Feb. 19, 2021.

<sup>803</sup> District Task Force on Jails & Justice, *Jails & Justice: A Framework for Change* (Washington, DC: District Task Force on Jails and Justice, 2019), <http://www.courtexcellence.org/uploads/publications/FrameworkForChange.pdf> (accessed March 23, 2021).

<sup>804</sup> Peter Hermann, Dana Hedgpeth, and Justin Wm. Moyer, *Homicides in D.C. hit 16-year high; shootings also have spiked*, *The Washington Post*, Dec. 31, 2020.

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<sup>805</sup> I agree that additional oversight of how MPD assigns and pays for overtime hours is needed. Officers who violate the overtime rules should be disciplined. Eliminating the inappropriate use of overtime should be a priority.

<sup>806</sup> MPD cannot, of course, be put in a position where it would be forced to decline officers' requests for sick leave, maternity leave, and the like.

<sup>807</sup> In March 2018, a 19-year-old was convicted of murder for killing a 15-year-old on a Metro platform and an off-duty Secret Service officer in his car. Keith Alexander, *A mother waited for a Metro train. Then a gunman shot one of her children as the others looked on*, The Washington Post, Mar. 4, 2018.

<sup>808</sup> In 2020, police reported 345 carjackings, a 143 percent increase from 2019. "Juveniles have been a particular concern. . . . 23 youths ages 12 to 17 have been arrested this year on carjacking charges." Peter Hermann, Justin Jouvenal, and Paul Duggan, *Girls, 13 and 15, charged with murder after alleged carjacking attempt in D.C.*, The Washington Post, Mar. 24, 2021.

<sup>809</sup> Charles Loeffler, *Raising the age juveniles are tried as adults doesn't lower crime*, New York Times, Dec. 14, 2015.

<sup>810</sup> The Council's ability to eliminate qualified immunity is limited. While some state legislatures have limited its use on the state level, modern day qualified immunity is a judicial doctrine created and affirmed by the United States Supreme Court that can only be overruled on the federal level by the Court itself or by Congress.