

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Metropolitan Police Department



Public Hearing on

B24-306, the “Youth Rights Amendment Act of 2021,”

B24-356, the “Strengthening Oversight & Accountability of
Police Amendment Act of 2021,”

and

B24-254, the “School Police Incident Oversight &
Accountability Amendment Act of 2021”

Testimony of
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Before the
Committee on the Judiciary & Public Safety
Charles Allen, Chairperson
Council of the District of Columbia

Virtual Hearing
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It is the mission of the Metropolitan Police Department to safeguard the District of Columbia and protect its residents and visitors with the highest regard for the sanctity of human life. We will strive at all times to accomplish our mission with a focus on service, integrity, and fairness by upholding our city's motto, Justitia Omnibus -- Justice for All.

Good morning, Chairperson Allen, members and staff of the Committee, and everyone watching this hearing remotely. Thank you for the opportunity to testify today on proposed public safety legislation. Before I discuss the specific bills, I would like to take a moment to emphasize some of the many core values and principles for public safety in the District that we share. We agree that the city needs to invest in people and neighborhoods to help prevent violence before it occurs. We agree that we should work with our kids early to teach them about effective conflict mediation and resolution. We agree that public safety may be best served if people who violate the law have real opportunities for rehabilitation. We agree that police accountability is essential to strong police-community relations. I know we all agree that violence – especially the current level of gun violence in the city – is unacceptable. And I sincerely hope you agree that our police force is full of committed, dedicated professionals who have earned the support of the community, and deserve support from the Council. I often hear from Councilmembers about the fantastic work you see in your communities every day. But while we agree on these core issues, in my testimony I will highlight several areas in two of the proposed bills with which I do not agree.

Youth Rights Amendment Act

The Youth Rights Amendment Act would provide that only an attorney can waive a youth's right to remain silent, and that any statements made during a custodial interrogation before an attorney waives these rights would be inadmissible in delinquency or criminal proceedings. In addition, it stipulates that any evidence obtained from a consent search of someone under 18 years of age would be similarly inadmissible.

In brief, this bill will further shield youth in the city from any consequences for delinquent or serious criminal acts and will significantly limit the ability of the juvenile or criminal justice system to deal with serious crimes committed by juveniles. While the language of the bill may seem simple and reasonable – requiring a developmentally appropriate Miranda warning or a warrant – it has far reaching implications.

As an initial matter, a custodial interrogation is generally interpreted by the court as words or actions that the police should know are reasonably likely to elicit an incriminating response from a person who is suspected to have committed a crime and who is under formal arrest, or whose freedom of movement has been restrained to the degree associated with a formal arrest. But this and the Miranda warning may become almost irrelevant if an attorney is the only individual who can waive a youth's rights to remain silent. A broad interpretation by a judge may lead to clear statements of culpability being suppressed, and a youth involved in violent offenses returning to the community with no additional supervision or support, possibly to commit offenses of escalating seriousness.

The elimination of consent is also going to have broader implications. For instance, rather than risk escalating criminal involvement, parents or other family members sometimes convince young people who have been involved in crime to surrender themselves and any weapons to

police at a station. In these scenarios, any statements and evidence may be suppressed unless the family had also arranged for an attorney and MPD had been able to get a warrant. Keep in mind that consent is not just a matter for people committing a crime. For example, robbery victims have provided MPD access to their Cloud account in real time, where the criminals were already uploading pictures and videos taken with the stolen phone. Under this bill, if the victim was a juvenile, this information incriminating the robber would be inadmissible.

Make no mistake, this Administration and I believe in the power and importance of rehabilitation. For decades, MPD has devoted significant resources to organizing and sponsoring countless programs in our communities to support youth, especially at-risk youth, to help develop relationships and foster opportunities for our kids. In the past few years, we have gone beyond youth programs to reexamining how we interact with youth during basic encounters. MPD worked collaboratively with the Office of the Attorney General (OAG) to improve our policies governing interactions with youth. The policy implemented in January 2020 expands diversion opportunities, limits handcuffing, and reduces incidents where officers take a youth into custody for an arrest. With this new policy and the support of an OAG hotline to discuss charging decisions before a youth is taken into custody, juvenile arrests dropped 38 percent in 2020.¹ MPD conducted training with all members in 2020 to support implementation of the new policy. In 2022, we plan to build on this foundation with training on Adolescent Development developed by Professor Kristen Henning, Director of the Juvenile Justice Clinic at the Georgetown University Law School.

The Administration is deeply committed to the belief that the rehabilitation of youth offenders is the best long-term strategy for their personal development and for enhancing public safety because the emphasis is on providing youth with the tools they need to successfully transition into adulthood. The District's juvenile justice agency, the Department of Youth Rehabilitation Services (DYRS) ensures all aspects of its operations—from staff training, to youth programs, to the agency's accountability mechanisms—support that philosophy. Over the past decade, the District's long-term commitment to this philosophy has resulted in an 81 percent reduction in the average daily population of committed youth. In 2011, DYRS had an average daily population of 1,006 committed youth. That has decreased steadily to an average daily population of just 196 committed youth in 2019.

What happens to youth who commit crimes but are not committed to DYRS? There are youth in our communities who are committing violent carjackings, robberies, sex assaults, and shootings. The Criminal Justice Coordinating Council recently looked at juvenile arrests during the pandemic. In reviewing two overlapping 12-month periods, they found in each cohort nearly 100 juveniles with three or more arrests during the year.² A substantial proportion of these arrests (42 percent and 58 percent of the two cohorts) were for violent offenses – robberies, assaults with dangerous weapons, and homicides. It is risky for the community and for the juveniles themselves to have a system that teaches them there are no consequences for actions that harm people. This not only allows but encourages escalating delinquent and criminal acts until they are

¹ The 38 percent drop in juvenile arrests exceeded the 34 percent decrease in adult arrests in the same time period.

² In the first cohort (April 1, 2020 – March 31, 2021), 89 juveniles were arrested three or more times, with 42% of the arrests being for violent offenses. In the second cohort (July 1, 2020 – June 30, 2021), 96 juveniles were arrested three or more times, with 58% of the arrests being for violent offenses.

committing violent offenses and potentially seriously injuring or killing themselves or others. Who does this help? The victim? The community? The youth? I don't believe it helps anyone.

This bill will make it exceedingly difficult to ensure that youth who are committing serious crimes are held accountable and get the support they need to redirect their lives. Our community members are invested in our youth, but they are also tired of the violence that too many juveniles commit with impunity. In the past 22 months alone, we have arrested 24 juveniles for homicide. In 2021, we have arrested 78 juveniles for carjackings – four of them more than once. When we have credible evidence that they committed the crimes – from their own statements or surrendered weapons – we cannot dismiss this evidence and allow them to continue to endanger the community under the theory that they are not responsible for either their actions or their words. I urge the Council to take no action on this bill.

Strengthening Oversight and Accountability of Police Amendment Act

As the Chief of Police, I am committed to high standards of accountability for myself and everyone who works for me. And make no mistake, there is a strong network of accountability surrounding this Department. We are accountable to elected officials, including the Mayor, the Council, and Advisory Neighborhood Commissioners. And each of these officials is accountable to the District residents who elect them. The Department and its members are also accountable to the District's Office of Police Complaints, the DC Auditor, and the Inspector General. We are held accountable through civil litigation. As individuals, MPD members can be and have been prosecuted for criminal misconduct. And above all of this, from every officer on the street to the Chief of Police, we answer to the community every day. Whether we are attending a community meeting, answering a phone, or simply walking a block, the public frequently and vocally holds us accountable for the actions of all of our members.

So when I say the proposed bill goes too far, it's not because I don't want accountability. It is because it treats our officers, the overwhelming majority of whom serve our community faithfully, unfairly. It is because it will bog the Department down in endless bureaucracy that will prevent the agency from effectively and efficiently serving the city. And it is because it does not protect the privacy interests of everyone who is victimized by crime or chooses to work with the Department.

Officers

The requirement for a comprehensive personnel database to be made public means that much of an officer's personnel record – from discipline to training and commendations – for the length of their career would be open to public inspection. No other public employees are subject to this level of scrutiny. Not the firefighters or EMTs who have access to the homes of sick residents. Not the teachers or social workers who work with our students and make decisions about families, youth, and seniors. Not the staff of correctional facilities.

All of these employees have a tremendous impact on the lives of our residents, especially when they are vulnerable. And sometimes, members of their professions also make mistakes or violate the public trust. But their entire professional lives have not been opened for public inspection. Their families and their homes are not going to bear the brunt of information in the hands of people who may target them. Several public officials in DC, including members of this Council, have been targeted for harassment or threats in their homes. And perhaps that is the

price we pay for our high ranking jobs. However, lower level employees should not be subjected to these same conditions. They are – and should be – held accountable for their actions in their professional capacity, but there should be some limits that allow them and their families to continue to function as private individuals. If their personnel information is going to be open for public inspection, then let it apply to all District government employees, just like the public database of all employee salaries.

The proposed amendment to the DC Freedom of Information Act (FOIA) also violates the privacy of complainants, victims, and civilian witnesses by eliminating the normal privacy exemptions under DC FOIA. In their place, the proposed legislation allows “the home addresses, personal telephone numbers, personal cell phone numbers, or personal email addresses of any officer or complainant” to be redacted. However:

- The names of complainants, victims, or witnesses would be disclosed without their consent.
- Where complainants, victims, and/or civilian witnesses work, their work phone numbers, and work email addresses cannot be redacted.
- There is also no provision for “the home addresses, personal telephone numbers, personal cell phone number, or personal email addresses” of witnesses to be redacted.
- Other identifying or descriptive information which may disclose where complainants or civilian witnesses live or work are not subject to redaction.
- In domestic situations, there is no provision to redact the names of the spouse or children of the involved officer.
- Highly personal information, such as financial information, allegations of marital infidelity, or an officer being the victim of domestic violence cannot be redacted.

In addition to the harm this may cause to these individuals, the new provision may have a chilling effect on individuals coming forward to complain or cooperate.

Officers also have due process rights in criminal and administrative matters. Giving the Office of Police Complaints (OPC) the authority to conduct administrative investigations while criminal matters proceed not only potentially violates the individual’s rights, but it also jeopardizes the government’s ability to sustain outcomes in either the criminal or administrative matter. This principal was recognized by the Council in the past which determined that the timeline for departmental misconduct investigations should be tolled while prosecutors conduct criminal investigations. Without that, criminal or disciplinary penalties may be overturned because of inconsistencies in parallel investigations or findings. This might make for a faster resolution of administrative matters, but that is not necessarily a just process or outcome. In the end, having cases overturned serves neither the public nor the employee. As you know, we have extensive experience in this area with discipline – particularly in the most egregious cases – being overturned in arbitration. Being forced to reinstate officers that the agency has already terminated is one of the worst tasks in my job. We certainly don’t want to see this problem expanded. More to the point, how can we expect officers to respect constitutional rights if the city government disrespects theirs?

Expanding Bureaucracy

The proposed bill would significantly expand the scope of OPC's operations. The nine voting members of the OPC Board would include:

- Three members, ages 15-24, from neighborhoods with higher than average stops and arrests,
- Two from immigrant communities, or groups serving them,
- Two from LGBTQIA communities, or groups serving them, and
- Two with disabilities, or groups serving them.

The proposed bill provides for no other qualifications for this group, such as legal, labor, or law enforcement experience or expertise. Yet they are expected to review and advise on serious uses of force, in-custody deaths, discipline, and almost all police policy and training. They also specifically would be required to authorize an administrative investigation being done concurrently with a criminal one. I have already highlighted the significant risks with such an action.

Moreover, it is unclear how the Board would be able to handle this tremendous volume of work. As written, MPD would be transmitting about 50 "non-administrative" policies and more than 100 trainings per year. MPD would practically need to dedicate a full time person to explain these policies and trainings to the Board and hire a Director of OPC Correspondence. The 45-day period for Board review would delay action on important issues, jeopardizing the Department's ability to quickly adjust to ever changing public safety needs to serve our community. For instance, we have issued more than 70 policies during the public health emergency. But the 45-days would not be long enough for the Board to learn the issues or gather public comment for what will be an average of 13 trainings and policies transmitted every month. In addition, every area where OPC and MPD disagree is going to be rife for use in every discipline arbitration, criminal prosecution, or civil case.

The current process for OPC recommendations to MPD and our response works. OPC currently issues about five or six policy reports per year. MPD responds to all policy recommendations received from OPC. Since 2015, we have agreed in whole or in part with 87 percent of OPC's recommendations. Among the OPC recommendations implemented by MPD are changes to the way we collect use of force data, changes to our policy governing neck restraints, updated guidance on language access and the use of interpreters, and updated guidance on Hatch Act implications for MPD employees.

One area where we disagreed illustrates exactly how this should be handled. OPC recommended that a form documenting consent searches be completed for every consent search. The Department was concerned about the feasibility of documenting and tracking this paperwork, but we agreed that it should be captured on the BWC video. The Council agreed with our position and legislated it. This represents an appropriate process for decision making in the public interest.

It seems clear that the sheer work load is more than a part-time board could handle. And it is important to recognize that MPD has a team of professionals working on these issues every day. They have advanced degrees or training in areas such as law, public administration, and education. They consult with outside sources, including community groups, police groups, and

other agencies, in developing policy and training. And they work continuously to try to balance often competing priorities. Ultimately, that is what the government is entrusted to do – try to weigh many factors to arrive at the best option for the public interest. While there is absolutely a role for the public voice in these matters, it is not necessarily in weighing minute details of almost every policy and training.

Unfettered Access to Sensitive Information

In addition to opening up information on victims, complainants, and witnesses in police personnel files, the legislation would allow the new OPC to have “unfettered access” to all MPD information. This would cover every piece of information or file in MPD, with no recourse for reasonable discussion or vetting. This includes information such as witnesses or confidential sources. There is no oversight for OPC to ensure this information is protected. OPC already has unfettered access to body-worn camera videos. This trust was violated by an employee who was watching videos with no justification or reason. This activity only came to light during a termination hearing for another reason, at which the employee attempted to justify their productivity by citing the logs for all the videos they had viewed. Unlike all the layers of accountability for MPD, OPC does not have that level of oversight, and therefore they should not have unfettered access to all of the sensitive information in MPD files.

School Police Incident Oversight and Accountability Amendment Act

MPD is continually striving to make more data about public safety and police operations available to the public while respecting important privacy boundaries. In that spirit, we support this bill but would like to work with the Committee on specific language to ensure that the parameters are clear and can be met without revealing information that would potentially enable the public to identify arrested youth.

There are a number of issues that make providing data on student-related interactions challenging. It is not simply a matter of pulling incidents at school addresses. The list of schools changes from year to year, and some schools, especially charter schools, may share a building with other organizations. Moreover, any incident at a school address may be unrelated to students. For example, an incident at a school address may be an assault involving staff members, theft of school property after hours, or a car stolen from the street in front of a school. It is easier to validate a narrow set of data provided by School Resource Officers, but with the legislatively-mandated elimination of that program looming, any patrol officer might respond to incidents at schools. It is more challenging to ensure consistency in data when the responding officer may only report on one or two school incidents per year.

The Department will continue to work to improve that reporting, but we recommend that the language be amended in certain areas. For instance, officers should not ask whether an involved person has a disability, nor should officers document observations about abilities unless it has a bearing on the case. For instance, an officer might note in a narrative field that a victim cannot identify an assailant because of impaired vision. In addition, MPD is also not involved disciplinary matters and should not track them. The Office of the State Superintendent for Education tracks disciplinary data.

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In closing, I believe we can work together to further our common goals for public safety and accountability. I look forward to the opportunity to work with you in greater detail on the legislation. I am available to answer your questions.