

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Metropolitan Police Department



Comprehensive Policing and Justice Reform Amendment Act of 2020
(B23-0882)

and

Rioting Modernization Amendment Act of 2020 (B23-0723)

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

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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 afternoon, Chairperson Allen, members of the Committee, and everyone watching and listening remotely. I am here to provide public testimony on the *Comprehensive Policing and Justice Reform Amendment Act* and the *Rioting Modernization Act*. I will address the Policing and Justice Reform legislation now, and the Rioting legislation later this afternoon.

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Our country is facing a number of challenges right now including grappling with structural racism that pervades many aspects of our society – housing, education, healthcare, access to financial resources, and access to opportunity are all impacted. This past May, the murder of George Floyd very publicly highlighted the effects of racism and the need for police reform in our country. Fortunately, the District of Columbia has a law enforcement agency that is committed to reform. The Metropolitan Police Department is known for listening to and learning from our community, and MPD has a proven history of being willing to take proactive efforts to confront bias and eliminate injurious practices.

As you know, nineteen years ago MPD entered into a Memorandum of Agreement on Use of Force with the Department of Justice. When those reforms were adopted, MPD became a national model for use of force policies and practices. In fact, a number of those policies MPD implemented years ago are included in the Policing and Justice Reform legislation under discussion today.

The Department continued major reform efforts thanks to the leadership of and legislation enacted by the Council in 2004, when MPD revised its practices for First Amendment assemblies, and became a national leader in supporting peaceful demonstrations.

A follow-up evaluation of MPD's use of force policies and practices was conducted in 2015 by the DC Auditor. The DC Auditor contracted with the original Independent Monitor, and he confirmed that MPD continues to be a national leader in use of force practices and "remains committed to limiting and managing use of force – and to fair, unbiased and constitutional policing."

In recent years through improved hiring practices, forward-thinking policy, innovative training, accountability, and transparency, the Department has continued on a steady path of progress and reform. In 2016, MPD updated our Use of Force Policy and revised our mission statement to explicitly recognize the sanctity of all human life. The Department then trained all officers on the

new decision-making framework on use of force that emphasizes de-escalation, proportionality, and reasonableness.

In the past four years, MPD has worked to address concerns about bias and other issues in policing by implementing comprehensive screening for new recruits to ensure that our new hires reflect our DC values. MPD has doubled down on its commitment to a diverse workforce through targeted recruitment, and more than tripling in size our cadet program that hires DC high school graduates who matriculate into police officers.

Prior to the murder of George Floyd, MPD's forward-thinking policies prohibited the use of chokeholds and established an officer's duty to intervene. MPD officers are required by policy to intervene if they observe fellow officers using excessive force and to report if an officer is engaging in misconduct. MPD is also one of a few departments nationwide to actively train on the duties to intervene and report.

In 2018, MPD launched innovative training in partnership with the University of the District of Columbia and the National Museum of African American History and Culture (NMAAHC). This training helps MPD members focus on historical reasons for the challenging relationship between police and African American communities and motivates our officers to work to mend that relationship. The initial training featured a guided tour of the museum, a lecture on Black history and culture, and a facilitated discussion on race and policing.

Because of the overwhelmingly positive feedback from the community and the members to the initial curriculum, we are continuing this discussion in 2020 with the professors returning for more facilitated discussions on Black history and culture and its current relationship to policing. Phase Two focuses on procedural justice and how the earlier lessons are relevant to improving police-community relations today, particularly in terms of how we can appropriately engage individuals of all backgrounds who may have a negative perception of the police. Using documentary footage and current popular images, video, and music as a framing device, as well as voices from the community, professors are continuing the discussion to promote understanding of the history of law enforcement and relationships with Black, immigrant, LGBTQ+, and other underserved communities. Although we have worked to continue this through virtual learning, we hope to be able to continue in-person group discussions when the public health emergency ends.

In January of this year, based on several months of work with the DC Office of the Attorney General (OAG), MPD issued new policy governing interactions with juveniles. We recognize that the nature and circumstances of contacts with police can have a lasting impression on a young person. The policy enhancements are a reminder to our members to always treat individuals – regardless of their age – safely, respectfully, and with the best possible service. Through research and collaboration with OAG, MPD identified practices best suited for the District and implemented a number of new guidelines in our policy, including limiting

handcuffing or arrests of juveniles on scene whenever possible and encouraging officers to apply for a custody order (a juvenile arrest warrant) when there are no immediate public safety concerns.

In addition to strong policy and training, MPD emphasizes accountability and transparency to support an open and trusting relationship with the community we serve. More than 3,200 body-worn cameras (BWCs) are deployed to full-duty officers and sergeants in public contact positions, and they are required to be activated for every call for service. Officer conduct and uses of force are subject to external review by the independent Office of Police Complaints or the U.S. Attorney's Office, each of which has direct access to all BWC videos, as does the DC OAG.

Transparency is critical to community trust. That is why MPD makes all policies and a growing number of data sets – from police stops and arrests to crimes and hate crimes – available directly to the public on our website, MPDC.DC.gov. We also encourage members of the community to learn more about our operations from an officer perspective, through ride-alongs and our Community Engagement Academy.

Regarding police stops, earlier this week, a significant effort was launched to create community dialogue and support independent and robust research around police stops. Once MPD published the first four weeks of data from its expanded stop data collection in September 2019, we began planning the next steps for comprehensive and independent analysis of the data as well as community discussion on the role and impact of stops in our neighborhoods. The end result of our initiative is that this week and next, Georgetown Law, Howard University, and The Lab @ DC are co-hosting a two-week event on *“Reimagining the Role of Police Stops in Public Safety: A Workshop Series on Reducing Harm through Research, Policy, and Practice.”*

By bringing together impacted community members, advocates, researchers, and police practitioners, we can begin to understand more completely the costs and benefits of police stops and develop a research agenda and policy recommendations. The workshop series is designed to balance considerations of timeliness of analyses with ensuring that any research on this question is inclusive and credible, reflective of community concerns, scientifically rigorous, and conducted with transparency and objectivity.

This research agenda is just the latest effort of many through which MPD has tried to confront the issue of racism in policing head on.

I highlight this work to demonstrate MPD's well established and strong commitment to reform and progress. I have no doubt that there are areas where the Department can and will continue to improve in our service to the community. The Policing and Justice Reform Act will further this

in areas such as improved communication about consent searches and the expanded Use of Force Review Board.

While the Department has implemented all relevant areas of the emergency legislation, the one area where I remain most concerned is the new prohibition on officers being able to view body-worn camera (BWC) footage before writing routine reports. Before the passage of the emergency legislation, officers could review their BWC video before writing reports for any incident except a police-involved shooting. The legislation now prohibits this. This policy that was initially developed, like the rest of the BWC policy, through a comprehensive and inclusive process involving key stakeholders and community members before being enacted by the Council.

The original policy also has the support of the national and independent Police Executive Research Forum, which conducted extensive research supported by the US Department of Justice to develop best practice policies around body-worn cameras. Their rationale for allowing officers to review BWC videos included:

- “Reviewing footage will help officers remember the incident more clearly, which leads to more accurate documentation of events. The goal is to find the truth, which is facilitated by letting officers have all possible evidence of the event.
- “Real-time recording of the event is considered best evidence. It often provides a more accurate record than an officer’s recollection, which can be affected by stress and other factors. Research into eyewitness testimony demonstrates that stressful situations with many distractions are difficult even for trained observers to recall correctly.”
- “If a jury or administrative review body sees that the report says one thing and the video indicates another, this can create inconsistencies in the evidence that might damage a case or unfairly undermine the officer’s credibility.”

The new prohibition in the Act is inconsistent with the best practices as developed by the Police Executive Research forum. I urge the Council to modify this provision to be in line with national best practices.

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To close my testimony on the Policing and Justice Reform Act, I would like to reiterate my strong commitment and that of the Department to working with our communities and the Council on continually improving our police service to the District.

Thank you for the opportunity to address the Council. I will be happy to address any questions that you may have.

Rioting Modernization Amendment Act of 2020

The District of Columbia hosts hundreds of First Amendment demonstrations and assemblies each year. The vast majority of these are facilitated safely and peacefully for all those involved by the Metropolitan Police Department. MPD is a recognized leader in ensuring that individuals of all backgrounds and opinions are able to safely assemble and exercise their First Amendment rights in the nation's capital. Before I discuss the specifics of the Rioting Modernization Amendment Act, I would like to share with the Council and the public a video providing details on the small number of riots that have taken place amidst the almost daily peaceful demonstrations in DC since the tragic death of George Floyd in Minneapolis. It is essential for this discussion that everyone understand the difference between the peaceful demonstrations and violent and destructive riots.

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I know my time is limited so I will be very direct about the likely consequences of the proposed legislation. It would leave MPD officers with almost no legal tools to address violent and destructive rioting in the District.

The changes to the rioting legislation will make it impossible for the offense to be charged at the time of the riot. In order to make an arrest, an officer would need to have probable cause to believe that a specific person:

- Knowingly committed or attempted to commit an offense that causes or would cause bodily injury, property damage, theft, or sexual contact, **and**
- Was “Reckless as to the fact nine or more other people” are each committing or attempting to commit one of the same offenses, generally in the same area and at the same time.

The first provision means that rioting would become a secondary charge; officers could only charge it if they already had probable cause to make an arrest for one of the other offenses. The tactics that rioters use, which I will describe in a moment, make it **very unlikely** that officers will be able to make such an arrest on scene or will be able to identify the suspect through subsequent investigation. The second provision means officers would **never** be able to charge it on scene.

It is important to distinguish between people who peacefully demonstrate and those that participate in violent and destructive riots. The rioters that we have seen over the past several months and years are intent on committing destruction and violence and have developed tactics to evade identification and arrest. Beyond just covering their face, they dress similarly – usually in all black – to avoid identification through their clothing. They often change or exchange outer clothing or hats to further frustrate identification. They also exchange bags so that the person who committed damage to or destruction of property or an assault won't be found carrying the tools used to the commit the crime. When officers attempt to arrest individuals involved in the

riots, others involved in the action will intervene or throw objects at the arresting officers creating a greater likelihood of officers having to use force and exacerbating the situation. The result is a more dangerous situation for the rioters and the police. Additionally, under the proposed legislation, the people who knowingly facilitate the crimes won't face legal consequences.

If the Council proceeds with this legislation, rioters will be able to act with impunity. Police won't be able to detain violent and destructive rioters. It is important to note that dispersing a group that is intent on rioting only spreads the destructive behavior to other parts of the city. More businesses will be impacted by the destruction and looting, likely leading to higher insurance costs and possibly lost businesses and wages in the city.

Lastly, the Council must remember that this law is content neutral. In law enforcement circles, it is widely believed that there will be civil unrest after the November election regardless of who wins. It is also believed that there is a strong chance of unrest when Washington, DC hosts the inauguration in January. Regardless of who wins the election, now is not the time to restrict the police department's ability to effectively deal with illegal rioting.

Therefore, I urge the Council to take no rash action on this legislation at this time. Next year, the Council can take more time to deliberate on less drastic changes to the rioting law that both respects civil liberties and protects the District from people intent on committing violence and destruction on our streets while hiding under the umbrella of our nation's fundamental First Amendment rights.