Government of the District of Columbia

Metropolitan Police Department

Testimony of
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Police and Fire Departments Commencement of Discipline Amendment Act of 2014

Committee on the Judiciary & Public Safety
Tommy Wells, Chair
Council of the District of Columbia

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1350 Pennsylvania Avenue, NW
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Good afternoon Chairperson Wells, members and staff of the Committee on Public Safety and the Judiciary, and members of the public. As Chief of the Metropolitan Police Department (MPD), I appreciate the opportunity to testify about the Executive's strong support for Bill 20-810, the "Police and Fire Departments Commencement of Discipline Amendment Act of 2014." The text of my prepared testimony is posted on the Department's website, www.mpdc.dc.gov.

The bill before you will increase the accountability of members of both the Metropolitan Police Department (MPD) and the Fire and Emergency Management Services Department (FEMS). On multiple occasions, I have provided testimony to the Council on the need to support the efforts of our public safety agencies to permanently remove those few employees who engage in conduct that compels any reasonable person to realize that they should not be serving in a trusted position. As I have repeatedly said to this Committee: The current structure of termination appeals has failed to protect and serve the public safety interests of MPD and FEMS, and in doing so, has also failed District residents, businesses, and visitors.

The current law requires MPD and FEMS to commence disciplinary actions against both their sworn members and civilian employees within 90 days of the date the agency knew, or should have known, of the act or occurrence allegedly constituting cause. In addition, the existing law provides that the 90-day timeframe is tolled for causes that are criminally investigated by MPD, the U.S. Attorney for the District of Columbia, the Office of the Attorney General, or the Office of Police Complaints.

Time and time again, arbitrators have forced the Departments to rehire employees who had been fired for misconduct. In many of these cases, there is no dispute that the employees engaged in misconduct. Instead, in some cases, arbitrators focused on missed deadlines that had nothing to do with the merits of the case. In other cases, because of the ambiguity in determining a start date based on when the Departments "should have known" about misconduct, arbitrators decided to simply pick their own date on when the 90-day clock began to run. The sad irony is that the current law forces us to rehire officers who would be unable to meet MPD's current hiring standards for new recruits. This does a great disservice to the residents of the District of Columbia by significantly constraining the ability of public safety agencies to hold their employees accountable for their actions.

There is no logical reason why an arbitrary timeline for disciplinary action is imposed on these two agencies, yet not on any other agency in the entire District Government. Police officers, firefighters, and EMS personnel are the only District government employees who literally deal with life and death issues every single day. These are the employees who should be held to the highest standards of conduct and professionalism. Yet the District's law provides them – and only them – with a unique privilege that protects the few employees engaged in misconduct.

The current law forces MPD and FEMS to initiate disciplinary proceedings when they should prefer to wait until they have all the information from a criminal investigation. They have to rush forward with disciplinary proceedings in order to avoid being prohibited from bringing any action by the operation of the current law. With a majority of both agencies' employees being non-District residents, this is a very real problem for any criminal acts or actions that occur while the employee is off-duty or otherwise outside the District.

Enactment of this bill would return the District to the practice that existed until 2004. That was the year the Council enacted the current law which was in reaction to the agencies' employee discipline systems and is now outdated.

Currently, when an MPD or FEMS employee is accused of criminal misconduct outside the District, both the agency and the employee are put in an untenable position. Police and prosecutors from other jurisdictions will not share information for fear of jeopardizing their criminal case, and the employee typically asserts Fifth Amendment rights and refuses to provide a statement as part of the investigation. Moreover, since this provision became law a decade ago, personal electronics are in far greater use. It can take quite some time to complete the necessary forensic investigation of computers, smart phones, and social media accounts. For instance, when we need access to cell phone records, it takes time both to get a subpoena and for the cell phone company to comply with it. Thus, we're forced to go forward with missing and incomplete information or risk losing a disciplinary case involving potentially criminal conduct. This simply fails to serve the best interests of the public.

Let me provide you with a few examples of the absurd results of the current law:

- An MPD officer terminated in 2006 for his involvement in narcotics distribution, the use of ecstasy, false statements, using law enforcement databases for purposes unrelated to law enforcement, and association with drug dealers and extortionists was ordered reinstated when the arbitrator found that MPD had violated the 90-day rule and erred in crediting the testimony of drug dealers implicating the officer over defense testimony from fellow law enforcement officers. In short, the arbitrator went out of his way to use technicalities and his judgment substituted for law enforcement professionals to determine that a drug dealer should have a gun and a badge and carry the authority of a police officer.
- An MPD sergeant failed to report to MPD a home invasion and robbery involving his daughter whose boyfriend was a convicted drug dealer. Instead, he spoke to the boyfriend who threatened retaliation against those responsible, saying "I'm going to do what I have to do, and I'll go to jail behind this one." The sergeant took no action in response to the threat and the next day, a neighborhood resident who was involved in the robbery was shot and killed by someone hired by the boyfriend. Though terminated by MPD, an arbitrator applied the 90-day rule retroactively to the sergeant's misconduct (which had occurred before the 90-day rule went into effect), and ordered him reinstated.
- A FEMS ambulance driver was found to have taken a critically injured patient, David Rosenbaum, to Howard University instead of the much closer Sibley Hospital because the driver wanted to stop by her home after dropping him off. After FEMS moved to fire the ambulance driver, the District was forced to rehire her because the 90-day law makes no exception for cases under investigation by the Office of the Inspector General.

These examples do not represent the vast majority of men and women who serve the District proudly and honorably. But we are all tarnished by those few employees who engage in such egregious misconduct. That damage is only magnified when public safety employees who engage in such misconduct are ordered back to work because of technical or procedural issues. The corrosive effect of such decisions cannot be understated. Being forced to rehire employees who are not fit to work at MPD unquestionably hurts the morale and performance of the entire department, and having these employees as members of our department does a disservice to the community we are all sworn to protect. It also sends a message to those tempted to engage in

misconduct – that even if you are caught and fired, you still have a pretty good chance that an arbitrator will give you your job back if you can find some technical loophole.

The bill would benefit both agencies and employees by ensuring that the agency has sufficient information from which to make a disciplinary decision and that the employee has every opportunity to defend himself or herself in any subsequent disciplinary proceedings. It also benefits District residents and the general public, which can be assured that when investigations reveal that an employee has committed serious misconduct, the government is able to discipline the employee appropriately. Without this bill, we will continue to be unable to properly and effectively discipline those employees whose conduct clearly warrants such action, merely because the agency could not gather a complete record from a criminal investigation within 90 days. In addition, the employees will continue to be forced into disciplinary proceedings which might not be necessary, if the employee is exonerated as a result of a criminal investigation.

The Rosenbaum case and the examples provided above demonstrate that arbitrators have applied and interpreted the current 90-day law in ways that were never intended, applying it to conduct that occurred before it went into effect, forcing us to move forward with cases based on criminal conduct occurring outside the District, making no exceptions for Inspector General or Equal Employment Opportunity investigations, and, in some cases, choosing an entirely arbitrary date as to when the 90-day clock started to run.

The Rosenbaum case prompted two Mayors and two attorneys general to ask the Council to amend or repeal this provision, but to no avail. Yet time and again, I have to answer to the public, media, and Council for the behavior of officers that we cannot discipline or dismiss because of this law. This issue was last before the Public Safety Committee before you became the chair, so you are not responsible for that. However, if this Committee and the Council once again fail to act on this urgent issue – and fail to meet its own obligations to protect the public – then the questions and scrutiny about the actions of the officers that we have been forced to rehire should come to this committee. I urge you to support this bill and help ensure that public safety employees are held to the highest standards of professionalism and accountability.

I thank you for the opportunity to appear before you today on this important legislation and I am happy to address any questions at this time.