

**Statement on behalf of the
American Civil Liberties Union of the District of Columbia
before the D.C. Council Committee on the Judiciary and Public Safety
Public Roundtable
on the Matter of the Nomination of Pamela A. Smith to the Position of
Chief of the Metropolitan Police Department
by
Monica Hopkins, Executive Director
September 27, 2023**

Good morning, Chairperson Pinto and members of the Committee on the Judiciary and Public Safety. I am Monica Hopkins, Executive Director of the American Civil Liberties Union of the District of Columbia. Today, on behalf of the ACLU of D.C. and our over 14,000 members in all 8 wards, I submit the following testimony to share factors the D.C. Council should consider as it takes up Mayor Bowser's nomination of Acting Police Chief Pamela A. Smith for Chief of the Metropolitan Police Department (MPD, the Department).

The new MPD Chief must address the Department's long history of failure to hold officers accountable when they violate District law and Department policies. Failures of accountability weaken public trust in officers and the Department as a whole, making it more difficult to address community needs and public safety concerns.

More broadly, District leaders, including the new Chief, must recognize that creating an environment in which people across the District feel safe will require investment in a range of District agencies, as well as community organizations, which can respond to the specific needs that people experience more effectively. Public safety discussions should not center MPD, or equate police with public safety. District leaders must think beyond "crime and punishment" approaches that have devastated District communities.

We urge the Council to embrace a more comprehensive, systemic public safety approach, one that engages and partners with multiple agencies, and to ensure that the next Police Chief does so too.

As Council members continue to consider Acting Chief Smith, we urge you to engage with members of the community, particularly community members who have long raised concerns about mistreatment by MPD officers, the Department's lack of accountability, and the need for a range of approaches to public safety needs.

The Next MPD Chief Must Address Long-Standing Failures of Accountability Within MPD

The ACLU-D.C. believes strongly that a robust system of public safety cannot be successful without mechanisms to hold police accountable when they abuse their powers. We have staunchly advocated for increased transparency and accountability within the District's policing apparatus. Over the years, we have testified, held meetings, and submitted letters and emails urging different iterations of the D.C. Council to take bold action and establish mechanisms that hold the Department and its officers accountable when they violate Department policies or District laws. We have raised concerns about MPD's abuses of power and the perils of the Department being the sole arbiter of its own disciplinary actions for serious misconduct. We have continuously submitted recommendations for actionable steps the Council could take to bring about needed transparency and accountability. Some of our recommendations have included:

1. Transferring responsibility for discipline for serious misconduct from MPD to an impartial third-party entity.
2. Establishing meaningful consequences for when MPD or its officers violate MPD policies or District laws.
3. Passing an amendment to the Police Misconduct Database subtitle of the Comprehensive Policing and Justice Amendment Act of 2021 to include the total number of unique allegations made against an officer, not just cases that have been substantiated. Only including substantiated cases in the database does not provide the full scope of officer misconduct within MPD. And as we have also noted in the past, most cases do not get to the level of being substantiated due to the current structure of the disciplinary system.
4. Passing strong legislation to end qualified immunity, which shields police officers from accountability when they violate the constitutional rights of community members.

Numerous articles, reports, and lawsuits have been published and filed over the last few years detailing a wide range of misconduct within MPD, how the Department has handled officer misbehavior, and the cost of police misconduct to the

District.^{1,2,3} From not collecting and publishing data on stops required by the NEAR Act,⁴ to obfuscating Freedom of Information Act requests.⁵ From officers violating the constitutional rights of District residents⁶ to retaliation against officers who speak out against wrongdoing,⁷ and officers assaulting and threatening coworkers;⁸ MPD has a long history of flouting its own policies and District laws.

We continue to be concerned about the unlawful use of stop and frisk.⁹ MPD officers have conducted searches that went far beyond limited pat-downs for weapons,

¹ Hermann, P. and Silverman, E. “Three D.C. police officers suspended after video shows man repeatedly struck during arrest.” Washington Post, August 9, 2021. Available at https://www.washingtonpost.com/local/public-safety/dc-police-punch-suspect/2021/08/09/bc30e9b2-f930-11eb-8a67-f14cd1d28e47_story.html.

² Mehrotra, D., Gathright, J. and Austermuhle, M. “D.C. Police Tried To Fire 24 Current Officers For ‘Criminal Offenses.’ A Powerful Panel Blocked Nearly Every One, Documents Show.” DCist. December 28, 2021. Available at <https://dcist.com/story/21/12/18/dc-police-panel-blocked-mpd-firings/>.

³ Alexander, K. L., Rich, S., and Thacker, H. “The hidden billion-dollar cost of repeated police misconduct.” Washington Post, March 9, 2022. Available at <https://www.washingtonpost.com/investigations/interactive/2022/police-misconduct-repeated-settlements>

⁴ Grablick, C. and Lefrak, M. “MPD Releases Year’s Worth Of Police Stop Data Following ACLU Lawsuit.” DCist, March 6, 2021. Available at <https://dcist.com/story/21/03/06/mpd-releases-years-worth-of-police-stop-data-following-aclu-lawsuit/>.

⁵ Segraves, M. “‘There Is No Watchlist’: DC Police Chief Shoots Down Public Info Claim.” NBC 4 News, February 3, 2022. Available at <https://www.nbcwashington.com/news/local/there-is-no-watchlist-dc-police-chief-shoots-down-public-info-claim/2960345/>.

⁶ Crudup et. al. complaint. Case 1:20-cv-01135, United States District Court for the District of Columbia. Available at www.scribd.com/document/498469099/Crudup-Et-Al-Complaint.

⁷ A lawsuit by a veteran sergeant of the MPD alleged retaliation from Department leadership for speaking out against the use of “jump-outs”. The veteran sergeant contended that the practice was encouraged by commanders and fellow officers. Flack, E. “Veteran sergeant sues DC Police, claiming retaliation for reporting improper tactics.” WUSA9, October 15, 2020. Available at www.wusa9.com/article/news/investigations/veteran-sergeant-sues-dc-police-claiming-retaliation-for-reporting-improper-tactics/65-5aba5f74-e349-427f-88ad-8adbd5a43a3b

⁸ Grablick, C. “D.C. Police Officer Sentenced for Assaulting, Threatening Coworkers.” DCist, March 2, 2023. Available at <https://dcist.com/story/23/03/02/dc-police-officer-sentenced-assaults/>

⁹ A frisk is when a police officer pats or sweep the outside of a person’s clothes to check if they have weapons.

including conducting sexually invasive searches of D.C. residents¹⁰ and the reported continued use of “jump-outs.”¹¹ An ongoing 2020 class action lawsuit alleged that MPD’s Gun Recovery Unit “has a policy of stopping, frisking, and searching Black people without reasonable suspicion or probable cause, and that they fabricate information to justify the stops, frisks, and searches.”¹² Previous Chiefs of Police, including Lanier, Newsham, and Contee, have denied the use of these tactics despite veteran members of the force alleging these practices were encouraged by commanders and fellow officers.^{13,14}

MPD’s own data show major racial disparities in stops of individuals in the District, with stops disproportionately targeting Black people. An analysis of data on stops MPD officers made during 2020 indicated that although Black people comprised about 46 percent of the D.C. population, they represented 86.5 percent of stops, and over 90 percent of searches that resulted in no warning, ticket, or arrest (a slight increase from the previous year).¹⁵

¹⁰ In 2018, ACLU-D.C. represented M.B. Cottingham in settling a case against then-GRU officer Sean Lojano for an exceedingly invasive bodily search. The lawsuit stemmed from a 2017 incident in which Mr. Cottingham was stopped for an open container violation. After Mr. Cottingham consented to a frisk, Officer Lojano went far beyond what should have been a limited pat-down for weapons. Officer Lojano jammed his fingers between Mr. Cottingham’s buttocks and grabbed his genitals. Mr. Cottingham physically flinched and verbally protested, making clear that this highly intrusive search was not within the scope of the frisk to which he had consented. Officer Lojano responded by handcuffing Mr. Cottingham and returning to probe the most sensitive areas of his person — two more times. Officer Lojano was fired in September 2018 for a similar incident, which happened to occur just 30 minutes after the Cottingham encounter.

¹¹ The paramilitary technique in which police drive upon (usually in unmarked vehicles) a group of people (usually Black and brown men), jump out (often with guns drawn), and quickly start searching the people without probable cause or consent is colloquially called “jump-outs” by community members.

¹² *Id.* at note 6.

¹³ Flack, E. and Wilson, S. “DC Police chief testifies he did not investigate report of unconstitutional police stops known as ‘jump outs.’” WUSA9, February 6, 2023. Available at www.wusa9.com/article/features/originals/dc-police-jump-outs-tyre-nichols-dc-police-unconsitutional-stop/65-a170a6af-613f-4adf-97ef-7c3b7972c40f.

¹⁴ Flack, E. “Veteran sergeant sues DC Police, claiming retaliation for reporting improper tactics.” WUSA9, October 15, 2020. Available at www.wusa9.com/article/news/investigations/veteran-sergeant-sues-dc-police-claiming-retaliation-for-reporting-improper-tactics/65-5aba5f74-e349-427f-88ad-8adbd5a43a3b.

¹⁵ ACLU Analytics and ACLU of the District of Columbia. “Racial Disparities in Stops by the Metropolitan Police Department: 2020 Data Update.” Released March 11, 2021. Available at

The new police chief must be willing to scrutinize these issues and address them at the structural level.

MPD's Current Discipline System is Not Working

A July Washington City Paper (City Paper) article described instances in which the Office of Police Complaints (OPC) found MPD officers to have abused their power.¹⁶ OPC reported that officers verbally harassed and used unnecessary force against members of the public, including children, made false reports, failed to follow Department procedures, and exhibited other unprofessional behaviors in the course of their duties.^{17,18}

City Paper found the vast majority of officers against whom complaints were filed and sustained by OPC did not face any meaningful consequences.¹⁹ In all of the cases, the police chief had sole discretion to impose discipline. In lieu of corrective or adverse action, Former Chief Contee often only gave officers a letter in their file or recommended education-based development—a response so minimal that OPC noted in an October 2020 report that it would not consider it discipline.²⁰ As stated

<https://www.acludc.org/en/publications/racial-disparities-stops-metropolitan-police-department-2020-data-update>.

¹⁶ Ryals, M. “D.C. Police Chief Robert Contee Was Soft on Discipline, Civilian Oversight Office Says.” Washington City Paper, July 10, 2023. Available at <https://washingtoncitypaper.com/article/613340/d-c-police-chief-robert-contee-was-soft-on-discipline-civilian-oversight-office-says/>.

¹⁷ D.C. Office of Police Complaints. Findings of Fact and Merits Determination. Completed by Meaghan Hannan Davant January 23, 2022. Available at <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Merits%20Determination%20-%202021-0259.pdf>.

¹⁸ D.C. Office of Police Complaints. Findings of Fact and Merits Determination. Completed by Peter W. Tague November 19, 2021. Available at <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Merits%20Determination%20-%202021-0453.pdf>.

¹⁹ Washington City Paper conducted a review of cases and found that of the 41 sustained complaints for violations of District law or internal policies during former Police Chief Robert Contee’s two-and-a-half-year tenure as chief, only seven officers were issued suspensions.

²⁰ An October 2020 OPC report on MPD discipline emphasized the fact that the education-based development to which officers are often referred is merely additional training. These trainings typically cover basic things that are taught extensively at the police academy and should be clearly understood by officers — hence why they were not listed in MPD’s own table of penalties. In the

in that report, low-level reprimands “allow officers to believe that complaints from community members are unimportant and that MPD tolerates, or endorses, behaviors likely to produce complaints.”

Chief Contee’s failure to impose meaningful discipline was so concerning that the Executive Director of OPC, Michael Tobin, sent a letter to Contee in March of 2022.²¹ In his letter, Director Tobin noted (as ACLU-D.C. has also done many times) that “particularly with citizen complaints, MPD has demonstrated on repeated occasions over many years and several police chiefs that the department is not willing or able to provide proper accountability of its members.”²²

MPD’s Failure to Hold Officers Accountable has Consequences for Public Safety

During his July 10th legislative press briefing and the Council’s July 11th Legislative session, Chairman Mendelson emphasized that one of the biggest issues with fighting crime in D.C. is MPD’s low closure rates for homicides. The Chairman also noted one of the barriers to closing cases is community members not coming forward to speak with the police.²³

Distrust of the police has serious consequences. It undermines the legitimacy of law enforcement, and without legitimacy police lose their ability and authority to function. An environment in which police officers are not consistently and meaningfully held accountable for misconduct significantly erodes community trust in the Department—and with it, any sense of cooperation between harmed communities and the police.

report, OPC noted that it would not consider education-based development a form of discipline, because this type of action is usually not the appropriate response to sustained misconduct (and therefore unlikely to deter future violations). Office of Police Complaints. “PCB Policy Report #21-2: Discipline.” Released October 14, 2021. Available at https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Discipline.FINAL_.PDF.

²¹ Letter to Chief Contee from OPC Director Michael Tobin Re: Lack of Discipline of D.C. Police Officers. Sent March 25, 2022. Available at <https://policecomplaints.dc.gov/release/office-police-complaints-executive-director-sends-letter-dc-police-chief-addressing-lack>.

²² *Id.*

²³ D.C. Council Twelfth Legislative Meeting, held July 11, 2023. Available at https://dc.granicus.com/MediaPlayer.php?view_id=3&clip_id=8387.

Building legitimacy and trust is highlighted by the President’s Task force on 21st Century Policing in its 2015 report as the foundational principle in police-community relations and an essential component in police’s ability to partner with communities. As stated in the report’s First Pillar:

“Building trust and nurturing legitimacy on both sides of the police/citizen divide is the foundational principle underlying the nature of relations between law enforcement agencies and the communities they serve. Decades of research and practice support the premise that people are more likely to obey the law when they believe that those who are enforcing it have authority that is perceived as legitimate by those subject to the authority. The public confers legitimacy only on those whom they believe are acting in procedurally just ways. In addition, law enforcement cannot build community trust if it is seen as an occupying force coming in from outside to impose control on the community.”²⁴

Communities experiencing gun violence are also communities that have historically experienced the most harm from policing. It is absurd to expect members of Black and brown communities, who are continually harmed by policing, to start trusting the police when 1) harmful police practices continue and 2) officers who are found to have violated Department policies and District laws are essentially slapped on the wrist²⁵ and continue to be promoted²⁶. A Department without accountability cannot be expected to engender trust from the communities they are sworn to protect. MPD’s own general orders recognize the impact of officer behavior on public support

²⁴ 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. May 2015. Available at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

²⁵ One of the incidents that led Director Tobin to raise concerns about Chief Contee’s disciplinary decisions had to do with officer John Wright. Wright had conducted an illegal search of a woman’s home in June of 2020. The woman later file a complaint with OPC in July alleging harassment and unlawful entrance into her apartment complaint available at <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Merits%20Determination%20-%202020-0644.pdf>. The complaint was sustained and Chief Contee communicated to the woman that “he intended to fine or suspend Wright for what ended up being an illegal search of the woman’s apartment.” Contee instead issued officer Wright a form (PD62-E, available at <https://go.mpdonline.com/GO/3741000.pdf>.) used to document an officer’s behavior, but that, according to Director Tobin, ‘does not constitute corrective action.’ *Id. at note 23*.

²⁶ *Id. note at 2*.

and cooperation.²⁷ Yet, repeatedly, officers, and the Department as a whole, engage in actions that directly contradict principles that would produce trust.

The Council Must Ensure that MPD Prioritizes Accountability

Misconduct by MPD officers costs the District millions of dollars every year; dollars that would be better spent on resources that actually address public safety concerns and challenges confronting D.C. communities most harmed by both police and gun violence. Before confirming Acting Chief Smith, the Council should closely examine, and question, the candidate’s actionable goals for ensuring accountability — particularly for handling serious misconduct cases that harm members of the community.

Council members must be confident that the new Chief will commit to re-establishing police legitimacy, which requires procedural justice—that police listen to community members, show care for them, and treat them with respect and fairness. This requires the new Chief to hold officers accountable when officers disrespect the communities they serve and their civil rights and liberties. We will continue to have growing public safety issues and MPD will continue to have the same ailments, and community distrust, if its Chief does not lead with integrity and a clear plan for establishing better accountability mechanisms.

The Next MPD Chief Must Embrace a Comprehensive Vision of Public Safety that Reduces the Role of Law Enforcement

Every District resident deserves safety and security. To achieve this District leaders, including the Police Chief, must work to embrace and implement a comprehensive approach to and shared responsibility for public safety. The Council should recognize the unrealistic burden the public and government officials have placed on officers to prevent, respond to, and solve every real and perceived

²⁷ Section V.E. of MPD General Order 201.26, “Citizen-Police Officer Relationships,” states: “[i]t is expected that every member of this Department is keenly aware of the fact that public support and cooperation is essential if members are to effectively fulfill their police responsibilities. The extent to which the public will cooperate with the MPD is dependent upon its respect for, and confidence in, the MPD and its members. In any effort to strengthen the citizen-police officer relationship, the personal conduct and attitude of the police officer is of paramount importance. Members must understand that the basis of a professional attitude is a desire and a willingness to serve the public.”

community problem, such as mental health issues, homelessness, truancy, and drug addiction.²⁸

The Council and public bear responsibility for inappropriately addressing gaps in societal issues, such as inadequate housing, health care, education, and economic systems, with police. The new Chief, and the Council, should support police and the community by advocating for a more limited role for MPD within a larger constellation of appropriate public safety policies and interventions, which create better outcomes for communities and public safety.

Creating a comprehensive approach to public safety should include the following values:

- Recognition that public safety requires more than policing;
- Respect for public safety expertise that exists in communities and non-police institutions; and
- Respect for the rights and needs of the community members who such reforms are designed to protect.

Using these values as a basis for any reform proposal begins to create shared responsibility for public safety and an infrastructure that can actually prevent, address, and solve community and societal problems. The Council should ensure the next Chief is willing to shift the culture of MPD and its officers from that of “warrior,” an approach that focuses solely on enforcement and creates an “us versus them” mentality, to “guardian” of communities, which increases legitimacy and trust in police by listening to, partnering with and respecting communities.²⁹ This approach has been discussed for years as a way to increase public and officer safety and undergirds the 21st Century Policing Report.³⁰

Two examples of reforms that represent good public safety policies that reflect these values, policies the Council, nominee, and the broader Executive Branch should adopt, are provided below.

²⁸ Kranick, L. “Officer Overload: Are Too Many Responsibilities Compromising Officer Safety?” American Military University EDGE, February 14, 2017. Available at <https://amuedge.com/officer-overload-are-too-many-responsibilities-compromising-officer-safety/>.

²⁹ Rahr, S. and Rice, S. “From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals.” Office of Justice Programs, DOJ, April 2015. Available at <https://www.ojp.gov/pdffiles1/nij/248654.pdf>.

³⁰ *Id.* note at 24.

A Broader, More Balanced Vision of Safety for Young People

The District should keep young people safe without reinforcing trauma, discrimination, and the school-to-prison pipeline. District leaders should focus on building a collection of non-police interventions to prevent conflicts involving students from escalating into safety threats and more effectively respond to safety threats when they do occur. To accomplish this, ACLU-D.C. strongly supports removing police officers from schools.

This vision of a more balanced approach to school safety is reflected in Bill 25-234, the “School Safety Enhancement Amendment Act of 2023.” The legislation, co-introduced by Councilmembers Parker, McDuffie, Bonds, Lewis George, Nadeau, and Robert White earlier this year, would, among other things, establish a fulltime School Safety Director for every DCPS public and charter school, as well as a School Safety Assistant Director for each high school. Local Education Agencies will work with schools—including educators, students, and parents—to make school safety plans that offer a range of interventions to address issues that can impact school safety.³¹

Years of experience across the country tell us that when schools rely on police officers as a primary response to safety needs, officers frequently become engaged in matters that do not rise to the level of needing police involvement—creating inappropriate contacts between students and the juvenile/criminal legal system.³² This can lead to students, particularly students of color and students with disabilities, feeling unsafe and surveilled at school.³³ Further, policing is often only a reactive response to incidents that occur on campus or in the community.

³¹ Bill 25-0234, the “School Safety Enhancement Amendment Act of 2023.” Introduced March 24, 2023. Available at <https://lims.dccouncil.gov/Legislation/B25-0234>.

³² King, R. and Schindler, M. “A better path forward for criminal justice: Reconsidering police in schools,” the Brookings-AEI Working Group on Criminal Justice Reform, April 2021, available at: <https://www.brookings.edu/articles/a-better-path-forward-for-criminal-justice-reconsidering-police-in-schools/>

³³ The D.C. Police Reform Commission discussed the disproportionate deployment of school police officers and other security resources in schools “populated mainly by students of color.” The Commission also highlighted the disproportionate harms experienced by students from marginalized groups as a result of school policing. The District of Columbia Police Reform Commission, “Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission.” Released April 1, 2021, pp. 67-69. Available at: <https://dccouncil.gov/police-reform-commission-full-report/>.

Students need interventions and programming to serve them before conflicts or challenges reach that point.

By recognizing that there are a range of options for anticipating and responding to safety concerns in our schools, the legislation is more likely to create safer school environments that reduce public safety threats and the dangers of over-policing. Further, by drawing on expertise from schools and communities in the safety planning process, the legislation recognizes that the most important sources of knowledge of how to keep students safe are at the schools themselves.

Broadening public safety conversations to include community-based institutions with deep historical knowledge and expertise is illustrative of the value-based, solutions-oriented approach that District leaders should be taking to public safety.

Responding to Mental Health Crises

Far too often, police are called to deal with incidents outside of their expertise or skillsets, failing to address the underlying problems and traumatizing (or re-traumatizing) residents in the process. Police participation in responses to people experiencing behavioral health crises is one example of this phenomenon. Besides being an inefficient use of police resources and jeopardizing police safety, police are a deeply problematic approach to serving people who need mental healthcare rather than criminal legal system intervention. The presence of armed officers when someone is experiencing a crisis can escalate already tense situations and make individuals who have had negative interactions with police feel unsafe.

The next Chief, the Council, and the Bowser Administration should embrace an approach to addressing mental health crises that relies primarily on non-police interventions and properly fund such interventions so that District residents can access them.

The ACLU-D.C., in coalition with a number of community-based organizations and community members, constructed the D.C. Crisis Response platform.³⁴ The platform outlines a comprehensive set of reforms to the District's system for responding to residents experiencing a mental health crisis. These reforms include bolstering the District's 988 system, expanding the availability of non-police responders when crisis occurs, and building out alternatives to hospitalization.

³⁴ The D.C. Crisis Response Coalition's recommendations are available at: <https://www.dccrisisresponse.org/>.

As with school safety reforms, these reforms recognize that in order to meet the needs of members of our communities, the District must take a policy approach that does not use police as primary responders. Instead, the District needs to draw on the expertise of professionals and community members better equipped to serve people in deeply sensitive moments. Ultimately, District leadership, including the new MPD Chief, need to understand the value of this approach.

Conclusion

The Council should ensure that the next Chief of MPD is committed to officer and Department accountability, prioritizing a comprehensive approach to public safety, and increasing legitimacy and public trust of MPD and its officers by respecting the communities they serve. Furthermore, we urge Council members to hold the new Chief accountable for these commitments as the next chapter in the Department's history unfolds.