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**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
Budget Oversight Hearing for the
Metropolitan Police Department
By
Ahoefa Ananouko, Policy Associate
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Hello Chair Pinto and members of the Committee. My name is Ahoefa Ananouko, and I present the following testimony on behalf of the American Civil Liberties Union for the District of Columbia (ACLU-D.C.).

The ACLU-D.C. works to protect fundamental civil liberties and rights of District residents. We advocate for common-sense, evidence-based solutions to public safety. A critical aspect of public safety is ensuring that police are not abusing their powers or violating people’s rights—and that they are held accountable when they do. For years ACLU-D.C. has called on the Council to exercise its oversight duties by establishing meaningful mechanisms for accountability of the Metropolitan Police Department (MPD, the Department).

D.C.’s governing bodies must use all the tools at their disposal to ensure that the District’s resources are being used in the most appropriate and efficient manner, and that MPD is an agency working to achieve its public safety goals without violating Department policies, District laws, or the rights of community members. Without appropriate accountability measures, the legitimacy of D.C.’s policing apparatus will not only continue to be questioned, but will continue to cost the District millions of dollars every year.

If the Council is truly dedicated to passing a fiscally responsible budget for Fiscal Year 25, police misconduct must be a top priority. The ACLU-D.C. strongly urges the Council to fund front-end police accountability measures. In that vein we make the following recommendations to address police misconduct and accountability that could save the District money in the long-run:

1. Fund all aspects of the “officer disciplinary records database” created in B24-320, “the Comprehensive Policing and Justice Reform Amendment Act of 2021.”¹
2. Pass an amendment to include at least the total number of allegations against officers, not just those that are substantiated.
3. Remove final determination of discipline for serious misconduct from MPD and give that responsibility to a neutral third party like OPC.

¹ [B24-320, “Comprehensive Policing and Justice Reform Amendment Act of 2021.” Enacted January 19, 2023.](https://lms.dccouncil.gov/Legislation/B24-0320)
[https://lms.dccouncil.gov/Legislation/B24-0320.](https://lms.dccouncil.gov/Legislation/B24-0320)

4. Expand OPC's investigative authority to allow it to investigate more serious misconduct such as fraud, fabrication of evidence, and false reporting in statements and affidavits.
5. Fully fund the provision of Subtitle X of B24-320, which expanded the District's Freedom of Information Act (FOIA) law by prohibiting MPD, the D.C. Housing Authority Police Department (DCHAPD), and OIG from categorically denying or redacting police disciplinary records on the basis that it constitutes an unwarranted invasion of a personal privacy for officers.

These recommendations stem from significant issues we have observed with police misconduct and MPD's disciplinary system over the years. The ACLU-D.C. hopes that these recommendations serve as starting points for a more comprehensive, strategic approach that directly addresses police misconduct in the District. The following sections will discuss the costly nature of the status quo of responding to police misconduct primarily through lawsuits and settlements, and some of the key issues undergirding ACLU-D.C.'s recommendations.

MISCONDUCT AND ACCOUNTABILITY

Officer Misconduct is Costly

Across the country, taxpayers continue to bear the price of police misconduct, which has cost city governments billions of dollars over the course of the last decade. In many instances, millions of dollars are paid on behalf of the same officers who engage in repeated incidents of serious misconduct that goes unchecked.²

In D.C., the District government paid out more than \$90 million in settlements resulting from police misconduct between 2010-2020—the fifth highest amount paid by any city. \$54 million of that \$90 million was spent on just four claims and \$7.6 million was spent on 65 officers who had repeated claims of misconduct. The types of misconduct for which settlements were paid included wrongful arrest, harassment, and fabrication of evidence.³ The District government continues to spend million on settlements for MPD alone.⁴

Settlements often allow officers to escape accountability, as they do not require officers (or the police department for that matter) to admit to any wrongdoing, and they are, therefore, not held individually liable, no matter how egregious the misconduct. This typically means these cases do not show up in an officer's record and these officers can remain on the force for years, with some even getting rewarded with promotions.

Even in cases where MPD has attempted to hold officers internally accountable for misconduct, the District still ended up footing the bill due to MPD failing to properly follow procedures. In October 2022, the Office of the D.C. Auditor (ODCA) released a report detailing how the District government had to pay out \$14.3 million in backpay and reinstate officers who were previously terminated for misconduct. The

² Keith L. Alexander, Steven Rich, and Hannah Tucker, "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/>.

³ *Id.*

⁴ See MPD "New and Closed Lawsuits." Available at <https://mpdc.dc.gov/publication/new-and-closed-lawsuits>.

officers were not reinstated because they were later found to not have committed the violations for which they were fired, but because they appealed their cases to an arbitrator who in some cases thought termination was an excessive punishment. The Auditor also found that in other instances MPD was forced to reinstate officers because the Department failed to meet deadlines, follow procedures, or provide adequate evidence.⁵ At the time of the report, ODCA found that 15 of the reinstated officers whose cases were reviewed were still working at MPD and three had been terminated once again for misconduct.⁶

In nearly half of the cases reviewed, ODCA classified officers as posing a “threat to safety,” which means the officer was at “risk of harm to persons through action or inaction, such as physical and sexual violence, mishandling firearms, or compromising evidence related to an arrest.”⁷ The types of misconduct and charges for which officers were initially terminated include:

- Physical and sexual assault
- Conduct unbecoming (including using slurs at members of the public, indecent exposure)
- Child abuse
- Reckless endangerment
- Confining an unattended child
- Unnecessary force
- Untruthful statements and falsification of records or reports
- Failure to obey orders (e.g., not reporting evidence, working in uniform as private security without prior authorization)
- Failing to turn on body worn camera
- Neglect of duty.⁸

ODCA also found instances where MPD was aware of domestic abuse of a partner by one of its officers and failed to do anything about it.⁹

Financial costs are not the only consequences of police misconduct. Police misconduct has a direct impact on whether or not the U.S. Attorney’s Office (USAO) can successfully prosecute cases.¹⁰ Officers often serve as key witnesses in trials. Officers who lie or commit other types of serious misconduct can compromise criminal proceedings if their credibility comes into question. This can cost people their lives and livelihood, as what an officer says and does has the potential to irreparably damage lives and harm

⁵ Office of the D.C. Auditor, “36 Fired MPD Officers Reinstated; Receive \$14 Million in Back Pay” (2022), available at <https://dcauditor.org/report/mpd-personnel-settlement-report/>.

⁶ *Id.* Fourteen of the officers who were reinstated left MPD, five of whom left after working less than a year, and eight did not return to working at MPD despite winning their case.

⁷ ODCA report page 39.

⁸ *Id.* at Appendix B. Other types of charges and misconduct included: fraud, conviction of a crime, committing a crime, failure to report, crashing in MPD vehicle, being under the influence of an alcoholic beverage, falsifying residency paperwork, overlapping hours with another job, repeated complaints related to DWI, failure to assist a member of the public after a crash, improper discharge of service weapon, drinking an alcoholic beverage while carrying a firearm, and compromising a felony to assist a person suspected of a crime.

⁹ *Id.* at 50.

¹⁰ Alexander, K. L. “D.C. U.S. attorney declined to prosecute 67% of those arrested. Here’s why.” The Washington Post, March 29, 2023. Available at <https://www.washingtonpost.com/dc-md-va/2023/03/29/us-attorneys-office-charges-declined-dc-police/>.

communities—whether that is an innocent person getting locked up for something they did not do or someone who has caused harm not being held accountable.

Police misconduct also affects the culture of the police department (perceived and actual). Not only can the so-called “few bad apples” negatively influence the behavior of their fellow officers, they can also create a hostile work environment for officers who are trying to perform their duties within the bounds of the law. And taken together, those factors can deter people who may want to join the force—which hurts recruitment and retention.

Why the System Must Change

As it currently stands, the police chief is the designated final authority on discipline.¹¹ Even in instances where an entity like OPC recommends disciplinary action for the types of misconduct under its purview, the police chief (or their designee) ultimately makes the final determination for all disciplinary matters. Disciplinary action can take the form of corrective action or adverse action.¹² Although MPD’s own general order states that “Disciplinary action shall be administered by the department for sustained misconduct in a manner, and at a level, appropriate with the member’s past record and the seriousness of the offense, giving due consideration to mitigating and aggravating factors,” it has typically been the case that the discipline issued to officers has consistently failed to meet the gravity of the misconduct.

In a July 2023 review of 41 cases by Washington City Paper, they found that in the vast majority of cases where OPC sustained complaints against officers, the police chief (Contee at the time) did not impose any meaningful 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.¹³

These types of discrepancies were stressed in an October 2020 OPC report on MPD discipline. In that report OPC discussed the fact that in the majority of sustained complaints, MPD did not impose serious sanctions against officers and, instead, usually opted for low lever reprimands, such as education-based development.^{14,15} In one of the cases discussed in this report, an officer failed to provide necessary

¹¹ MPD General Order 120.21, effective November 27, 2022. Available at https://go.mpdconline.com/GO/GO_120_21.pdf.

¹² Id. See also MPD Sworn Employee Discipline (General Order 120.21), April 2006 version which provides more detail on what each type of action constitutes. https://go.mpdconline.com/GO/120_21re.pdf.

Corrective action can be a dereliction report (usually a simple written notice for non-serious misconduct), a letter of prejudice (a written notice which outlines the specific misconduct and possible future consequences), or an official reprimand. An adverse action is a department-level discipline that includes any fine, suspension, reduction in rank or pay, or termination.

¹³ 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/>.

¹⁴ PCB Policy Report #21-2:Discipline. October 7, 2020. Available at https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Discipline.FINAL_.PDF.

¹⁵ The education-based development to which officers are often referred is merely additional basic trainings 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 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

medical services and evaluation at the scene, despite the complainant repeatedly letting the officer know he was epileptic, that he felt ill and needed his medication.¹⁶ The lack of adequate consequences for officer misconduct continued to be such a persistent issue that in March of 2022, OPC Director Tobin sent a letter to then-Chief Contee raising concern about MPD’s unwillingness or inability to provide proper accountability of its officers over the course of several police chiefs.¹⁷

During the February 13 performance oversight hearings for OPC and MPD, Brent Sullivan, a public witness, testified before the Judiciary Committee about an incident that leads us to believe that MPD is not addressing police misconduct to the extent that it should be. During the hearing Mr. Sullivan recounted his efforts to get the Department to investigate an initial incident of police misconduct that was further exacerbated by additional misconduct from then-Chief Newsham, who held the disciplinary responsibility at the time. Mr. Sullivan was subsequently informed by MPD’s Internal Affairs that an investigation into the incident would only happen if MPD was compelled to do so through a lawsuit.

Incidents of police misconduct continue to be an issue in the D.C.—popping up in news headlines every so often or expressed by witnesses during Council hearings. Nonetheless, we have yet to see District leaders take major steps to address it head-on, as we have seen with efforts to overhaul the criminal legal system to address crime and violence in communities. Where proposals that would be good starting points have been made and passed, they remain unimplemented—leaving critical gaps in the District’s public safety infrastructure. The Council should at least fund the bills that have already been approved so that future efforts can build on their progress.

ACLU-D.C. RECOMMENDATIONS

MPD’s current disciplinary system emboldens officers to carry out repeated incidents of misconduct because they can usually count on not receiving harsh discipline. And because police chiefs themselves have not faced any personal backlash or adverse action for their role in discipline and misconduct issues at MPD, they too have had no incentive to change the way the Department operates. The ACLU-D.C. believes the following changes would improve police accountability and contribute to making D.C. safer for everyone:

1. We urge the Council to fund all aspects of the “officer disciplinary records database” created in B24-320, “the Comprehensive Policing and Justice Reform Amendment Act of 2021,” which was enacted in January 2021. Subtitle X of B24-320 requires that OPC maintain a publicly accessible database that tracks misconduct and discipline of officers from MPD, the D.C. Housing Authority Police Department, and investigators from the Office of the Inspector General. The database is supposed to be made public by December 31 of this year.¹⁸

misconduct (and therefore unlikely to deter future violations). Office of Police Complaints. “PCB Policy Report #21-2: Discipline.”

¹⁶ Id. at 3.

¹⁷ Letter from Director Tobin to former police chief Contee. Available at <https://policecomplaints.dc.gov/release/office-police-complaints-executive-director-sends-letter-dc-police-chief-addressing-lack>.

¹⁸ Subtitle X of B24-320 requires that OPC maintain a publicly accessible database that would track misconduct of officers from MPD, the D.C. Housing Authority Police Department, and investigators from the Office of the Inspector General. The database will contain, among other things, information about sustained allegations of

Police disciplinary and internal affairs records are essential tools for assessing both individual officers' histories and how MPD handles officer misconduct. This database will present a level of transparency that has not traditionally existed within policing, although these types of systems can be found for other occupations such as nurses, lawyers, and even barbers and cosmetologists. This database could serve as a vital tool for limiting future misconduct and provide the Council with opportunities to better perform its oversight duties, while also educating the public about the individuals sworn to serve and protect them.

Other jurisdictions around the country, including Colorado,¹⁹ Massachusetts,²⁰ and New York²¹ have implemented similar databases in varying degrees. Although not state-run, the Louisiana

misconduct pertaining to an officer's commission of a crime, the officer's interactions with members of the public, or the officer's integrity in criminal investigations." See [B24-320, "Comprehensive Policing and Justice Reform Amendment Act of 2021,"](#)

¹⁹ Colorado's Peace Officers Standards and Training (POST) Database was established under Senate Bill 20-217, enacted June 19, 2020. Among other things, the law requires the database to contain information related to Revocation of a POST certification, including the basis of the revocation; Untruthfulness; Three or more failures to follow POST Board training requirements within 10 consecutive years; Termination for cause, unless the termination is overturned or reversed by an appellate process; Resignation or retirement while under investigation by the employing law enforcement agency, a district attorney, or the attorney general; Resignation or retirement following an incident that leads to the opening of an investigation within six months following the peace officer's resignation or retirement; Being the subject of a criminal investigation for a crime that could result in revocation or suspension of certification or the filing of criminal charges for such a crime; and Credibility disclosure information reported by prosecutors that could impact an officer's credibility as a witness in court. See SB20-217 available at https://leg.colorado.gov/sites/default/files/2020a_217_signed.pdf. See also Colorado POST database, available at <https://post.coag.gov/s/>.

²⁰ Launched in August 2023, the Massachusetts Law Enforcement Officer Disciplinary Records Database was established under Chapter 253 of the Acts of 2020 and Senate Bill 2963. The database contains information about each certified law enforcement officer related to, among other things, alleged bias based on race, ethnicity, sex, gender identity, sexual orientation; use of excessive, prohibited, or deadly force; actions that resulted in serious bodily injury or death including officer-involved shootings; truthfulness or professional integrity (misrepresenting or falsifying reports or evidence); criminal misconduct (felonies, misdemeanors); and other misconduct (such as unprofessionalism, policy violations, conduct unbecoming, conformance to rules, etc.). See Chapter 253 of the Acts of 2020, available at <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter253> and Massachusetts Senate Bill 2963, available at <https://malegislature.gov/Bills/191/S2963/BillHistory?pageNumber=2>. See also Officer Disciplinary Records database, available at <https://www.mass.gov/info-details/officer-disciplinary-records-database>.

²¹ The NYPD Member of Service Histories database was made possible by the 2020 repeal of NY Civil Rights Law 50-a through passage of Senate Bill 8496. Law 50-a allowed the concealing of disciplinary records of police officer, firefighters, and law enforcement officers that work in prisons, except when the officer granted permission for their record to be release. The database only contains complaints under the Civilian Complaint Review Board (CCRB)'s jurisdiction, which fall under four categories of police misconduct specified under the New York City Charter: Force, Abuse of Authority, Discourtesy, and Offensive Language. Anyone can go on the CCRB's platform and search for an NYPD officer's record of misconduct allegations, the NYPD's disposition, and the penalty imposed. See NY Senate Bill 8496, available at <https://legislation.nysenate.gov/pdf/bills/2019/s8496>. See also NYPD Member of Service Histories database, available at <https://www.nyc.gov/site/ccrb/policy/MOS-records.page>.

Law Enforcement Accountability Database is another good example of what a police accountability database could look like.²²

2. As enacted, B24-320 only requires that information regarding substantiated allegations be included in the database. To improve the usefulness of the database we recommend that the Council pass an amendment to include at least the total number of allegations against officers, not just those that are substantiated. This would be a critical change as it would provide a slightly fuller picture of misconduct at MPD. As shown above, there are far too many instances where consequences do not meet the seriousness of misconduct or some misconduct are not even investigated. The latter types of incidents would not be reflected in the misconduct database, as the law is currently written.
3. The ACLU-D.C. strongly recommends that the Council remove final determination of discipline for serious misconduct from MPD and give that responsibility to OPC. OPC is a neutral entity with deep knowledge about police misconduct issues. Additionally, the agency already has the authority to make recommendations for discipline for issues under its purview. However, OPC's discipline determinations are not binding, as the police chief or their designee still retain the discretion to determine the final discipline that should be imposed. As OPC has pointed out over the years, there are too many instances where the discipline imposed by MPD does not meet the gravity of an officer's actions. And, unlike the police department, OPC has no incentive to shield officers who violate Department policies or District laws. This change could also ensure that discipline is consistent across the board.
4. We strongly recommend that the Council expand OPC's investigative authority to allow it to investigate more serious misconduct such as fraud, fabrication of evidence, and false reporting in statements and affidavits. Currently, if OPC receives complaints about these and other cases of serious misconduct, the agency is required to refer them to MPD.
5. Fully fund the provision of Subtitle X of B24-320, which expanded the District's Freedom of Information Act (FOIA) by prohibiting MPD, DCHAPD, and OIG from categorically denying or redacting police disciplinary records on the basis that it constitutes an unwarranted invasion of a personal privacy for officers (an excuse MPD used regularly to deny FOIA requests).²³ This provision, like the misconduct database is critical for transparency into police practices. The OPC side of this has been funded, but the agency has not started the process of hiring because the MPD portion has not been funded. MPD had previously said it would need 9 new staffing positions to fulfill its responsibilities under this legislation.²⁴

²² The Louisiana Law Enforcement Accountability Database is an open source database created by the Innocence Project New Orleans and Public Data Works. Although the database is not run by the state government, the information contained in it is sourced from official public records from across the state of Louisiana. The platform contains data related to personnel, police misconduct, use of force, and other related dataset from over 600 law enforcement agencies in the state. See <https://llead.co/>.

²³ B24-320, 38.

²⁴ These positions include: A management analyst to manage increased communication and workload the OPC in the areas of investigations and discipline; a policy writer who would liaise with the Police Complaints Board on the bill's new requirement for MPD to send all draft policy directives to PCB for review and approval; an attorney to support the expansion of records subject to FOIA (and any associated appeals) under Subtitle X, as well as to support the increased audits conducted by the new Deputy Auditor for Public Safety; and five new FOIA specialists

CONCLUSION

MPD has one of the largest budgets of all District agencies, consistently at over half a billion dollars. Yet, the District spends more millions every year just on settling cases of police misconduct. These are funds that could be better spent filling critical gaps in community needs that would significantly improve the livelihood, and by extension safety, of D.C. communities.

Police officers are not only sworn to enforce laws on members of the public, they also have a state-sanctioned right to take life. Therefore, the individuals who occupy these positions should be held to higher standards. Yet, much like MPD's own strategic plan,²⁵ public safety strategies that have been proposed by District leaders have not outlined a strategy focused on changing the culture at MPD, which would in turn reduce, if not prevent, police misconduct. The D.C. government will continue to foot the bill if the Council and other District leaders do not act to meaningfully address police misconduct. Additionally, the Council's own authority will come into question, community trust in police will continue to erode, and MPD will serve as confirmation to the notion many people hold, that police are above the law (or at least they seem to act like it).

As noted by Council Member Robert White during the Council's March 5th Committee of the Whole meeting, "wanting accountability for police shouldn't be seen as anti-police." Police misconduct costs the District a significant amount of money and gets in the way of building a robust system of public safety.

and one FOIA supervisor. Finally, to address an expected influx of FOIA requests. See Fiscal Impact Statement for B24-320. Available at [https://lms.dccouncil.gov/downloads/LIMS/47448/Other/B24-0320-FIS Comprehensive Policing and Justice Reform.pdf?Id=151706](https://lms.dccouncil.gov/downloads/LIMS/47448/Other/B24-0320-FIS%20Comprehensive%20Policing%20and%20Justice%20Reform.pdf?Id=151706).

²⁵ MPD 2023 Strategic Plan. Available at <https://mpdc.dc.gov/service/strategic-plan-update-2023>.