

# **BICYCLE SAFETY AND MPD ENFORCEMENT OF THE DISTRICT'S BIKING LAWS**



## **REPORT AND RECOMMENDATIONS OF THE POLICE COMPLAINTS BOARD**

**TO**

**MAYOR VINCENT C. GRAY,  
THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND  
CHIEF OF POLICE CATHY L. LANIER**

**September 12, 2013**

### **POLICE COMPLAINTS BOARD**

**Kurt Vorndran, Chair  
Assistant Chief Patrick A. Burke  
Iris Chavez  
Karl M. Fraser  
Margaret A. Moore**

**1400 I Street, NW, Suite 700  
Washington, DC 20005  
(202) 727-3838**

**Website: [www.policecomplaints.dc.gov](http://www.policecomplaints.dc.gov)**

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## I. INTRODUCTION AND OVERVIEW

In February 2011, the Council of the District of Columbia's Committee on Public Safety and the Judiciary (Public Safety Committee) held a public hearing on the topic of police enforcement of pedestrian and bicycle safety laws.<sup>1</sup> Biking enthusiasts who testified at the hearing asserted that there was a need for Metropolitan Police Department (MPD) officers to receive additional training on bicycle safety and the proper enforcement of the District's bike regulations. Specifically, at the hearing, the executive director of the Washington Area Bicyclist Association (WABA) related concerns about what he perceived as ineffective investigation by MPD officers of bike-motor vehicle crashes, the lack of adequate training for MPD officers on laws applicable to cyclists, and officer reticence to enforce the prohibition against motor vehicle drivers stopping, standing, or parking in bike lanes.<sup>2</sup> Biking advocates who testified at the hearing also expressed concern that some MPD officers harbor pro-motorist biases due to a perception that many people who ride bikes openly flout the traffic laws.

To address these issues, the Police Complaints Board (PCB) in September 2011 produced a report and set of recommendations that urged MPD and District government stakeholders to take steps to better protect cyclists and improve MPD interactions with the bicycling community. The report made three major recommendations. First, PCB proposed that MPD change its method of investigating bicycle-motor vehicle crashes in order to provide appropriate safeguards for bicyclists who are injured. Second, PCB recommended that MPD better train officers on the applicable biking laws in order to dispel claims that officers are neglecting to enforce traffic laws directly affecting bicyclists and incorrectly citing them for conduct that is legal. Third, in order to address the occasional tension and misunderstanding between people who ride bikes and police officers, PCB urged MPD to increase its involvement with the District's Bicycle Advisory Council (BAC), a task force established by District law to advise the Mayor, the Council of the

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<sup>1</sup> *Enforcement of Pedestrian and Bicycle Safety Before the Committee on the Judiciary*, Council Period 19 (D.C. 2011).

<sup>2</sup> *Id.*

District of Columbia (District Council), and District agencies on matters pertaining to bicycling issues. PCB also suggested that BAC strengthen the effectiveness of the existing task force by taking more steps to engage the public and by actively providing guidance to MPD on bicycling matters. Through the implementation of these proposals, PCB believed that officer-cyclist relations would be improved in the city, leading to safer conditions for those who ride bikes and fewer complaints against police officers.

In June 2012, after the District Council's Public Safety Committee held two more hearings involving bicycle safety,<sup>3</sup> then-Committee Chairman Phil Mendelson sent a letter to the Office of Police Complaints (OPC) in which the councilmember cited the "valuable service to the Council" the Board provided in issuing the September 2011 report.<sup>4</sup> The chairman requested that PCB "follow up that work."<sup>5</sup> In a subsequent October 2012 meeting with representatives of OPC, Chairman Mendelson requested that the Board: 1) assess whether MPD had been properly citing bicyclists for violations of the District's "riding abreast" bicycle regulations; 2) review whether MPD officers are now ensuring that injured cyclists involved in crashes with motor vehicles are interviewed prior to the determination of fault in those accidents; and 3) examine whether MPD implemented the other recommendations the Board proposed in its September 2011 report. As the two-year anniversary of the issuance of PCB's report and accompanying recommendations approaches, the Board believes that the occasion presents a worthwhile opportunity to examine the issues raised by the Public Safety Committee and assess MPD's progress in addressing and implementing PCB's recommendations.

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<sup>3</sup> The second hearing was held on November 2, 2011, and the third hearing was held on May 30, 2012. *See supra*, note 1; *Enforcement of Pedestrian and Bicycle Safety Before the Committee on the Judiciary*, Council Period 19 (D.C. 2012).

<sup>4</sup> Letter from Phil Mendelson, chairman, District of Columbia Council, to Philip Eure, executive director, District of Columbia Office of Police Complaints (June 4, 2012).

<sup>5</sup> *Id.*

In conducting its review, PCB obtained data from the District's Department of Motor Vehicles (DMV), WABA, and MPD. Below are the results of the Board's assessment.<sup>6</sup>

## II. FINDINGS

### A. *Review of MPD's rate of error in citing "riding abreast" violations*

Pursuant to D.C. Mun. Regs. tit. 18, § 1201.7 (2013), people traveling by bike on District roadways "shall not ride more than two abreast except on paths or part of roadways set aside for the exclusive use of bicycles." According to the regulation, "[p]ersons riding two abreast shall not impede the normal and reasonable movement of traffic and, on a lane roadway, shall ride within a single lane."<sup>7</sup>

Due to concerns that MPD officers were improperly issuing "riding abreast" citations to bicyclists, OPC asked for and received from WABA information relating to these types of tickets issued by the Department from January 2010 to May 2012.<sup>8</sup> In addition, OPC asked DMV for riding abreast citation information for the period between January 2010 and December 2012. The materials requested from DMV included the riding abreast tickets, notes written by the officers concerning the issuance of citations, information relating to the disposition of tickets, and any hearing records for the tickets from DMV's Traffic Adjudication Services.<sup>9</sup> In all, OPC

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<sup>6</sup> PCB is issuing this report pursuant to D.C. Code § 5-1104(d) (2011), which authorizes the Board to recommend to the Mayor, the Council of the District of Columbia, and the chiefs of police of MPD and the D.C. Housing Authority's Office of Public Safety reforms that have the potential to reduce the incidence of police misconduct or improve the citizen complaint process. PCB is grateful to the following OPC staff members who assisted in developing, researching, and drafting this report: Philip K. Eure, executive director; and Nicole Porter, special assistant.

<sup>7</sup> D.C. Mun. Regs. tit. 18, § 1201.7.

<sup>8</sup> WABA had obtained this information as a result of an April 2012 public documents request to DMV for riding abreast tickets.

<sup>9</sup> Hearings can be held in person or through the citation recipient's submission of mailed documents setting forth a defense.

received from WABA and DMV information related to a total of 14 citations -- eight in 2010, three in 2011, and three in 2012.

With respect to two of the eight tickets issued in 2010, it appears that the officer improperly cited the bicyclist for riding abreast. In both citations, the officer gave out a ticket for riding abreast, even though the individual was the only person biking in the traffic lane. In another three of the eight citations, it is unclear whether the officer improperly cited the person because the accompanying officer notes are blank, and there is no information on the actual ticket about the events that gave rise to the purported infraction. Regarding the sixth citation, the bicyclist paid the ticket, even though the accompanying officer notes indicate that the riding abreast citation was issued in error. The seventh riding abreast ticket was also paid by the cyclist. There were no accompanying officer notes for the seventh citation. In the eighth remaining ticket, the bicyclist denied the infraction, asserting that although he had been riding in a traffic lane and had passed a slower moving cyclist, he did not impede the normal and reasonable movement of traffic. The citation was later dismissed by a hearing examiner with DMV's Traffic Adjudication Services.

For the year 2011, with respect to two of the three tickets, the cyclists paid the citations. Regarding one of these tickets, the bike rider requested a hearing, but failed to show up for a rescheduled hearing and later paid the citation. There were no accompanying officer notes for either ticket. The third citation, which also did not include any officer notes, appears to have been improperly issued. In that case, the individual had been riding next to an MPD van that made a "right hook," hitting the bicyclist before turning left. In its appeal to DMV's Traffic Adjudication Services, the cyclist noted that the "riding abreast" regulation was inapplicable since it "relates to [a] situation when there are multiple bicycles riding in a pack on the road." The ticket was later withdrawn by MPD.

For the year 2012, regarding two of the three tickets issued, it appears that the officer improperly cited the bike rider. With respect to the first ticket, in a letter to DMV authored by the cyclist's father (the individual riding the bike was a minor), he stated that the "riding abreast"

citation was improper because the minor had been riding alone. A Traffic Adjudication Services hearing examiner later dismissed the citation. MPD withdrew the second ticket, explaining that the citation “does not meet the criteria of violating the riding abreast law.” Regarding the third ticket, it is unclear whether the officer improperly cited the person because the accompanying officer notes are blank, and there is no information on the actual ticket about the events that gave rise to the purported infraction.

As the data show, the total number of riding abreast tickets issued by MPD officers from January 2010 to December 2012 decreased from eight in 2010, to three in both 2011 and 2012. The number of citations that appear to have been issued improperly during that time went from two in 2010 to one in 2011, and then increased back to two in 2012. It is difficult to draw many conclusions from the data, however, because of the small number of citations issued and because many of the tickets only list the type of infraction with no additional notes about the underlying circumstances.<sup>10</sup> In any event, there is no evidence of any widespread problem with officers erroneously issuing riding abreast tickets within the past few years.

MPD has made efforts to better educate officers on both the “riding abreast” regulatory provision and the District’s bicycle regulations in general. In June 2012, MPD issued a teletype reminding officers of the facts needed to support a “riding abreast” charge. In the teletype, MPD also announced that an online training module is being developed to further assist officers in their enforcement duties. The teletype also states that WABA’s “Pocket Guide to D.C. Bike Laws” (WABA books) has been posted on MPD’s intranet,<sup>11</sup> and encourages officers to refer to the WABA books as needed.

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<sup>10</sup> Four of the tickets that did not include officer notes were not paid by the cyclist. Because of the non-payment, these cases are still considered “open” by DMV and the bike rider has been deemed liable by the agency, having failed to contest or pay the ticket within DMV’s prescribed time limits. For purposes of its analysis, however, PCB has construed as legitimately-issued riding abreast tickets only those citations where the cyclist paid the ticket or where there was evidence in the record supporting the riding abreast infraction.

<sup>11</sup> MPD’s “intranet” is a private computer network accessible only to its employees.

Although these steps are commendable, in light of repeated concerns from biking advocates about improperly-issued riding abreast tickets and other citations, there are additional measures that can be taken to ensure both that patrol officers are properly enforcing the regulations and that MPD supervisors are quickly identifying areas of the law where officers need more training. For example, MPD officers should document the basis for riding abreast infractions or any citation based on a violation of the bike regulations in the accompanying section for officer notes. Due to specific concerns about improper riding abreast citations, MPD supervisors should also regularly review riding abreast tickets issued by officers to determine whether any such tickets are being issued improperly. In the event that bike riders are cited improperly for riding abreast, the Department should provide additional training to those offending officers or to the entire police force, as appropriate.

*B. Assessment of MPD officer investigative practices in bike-motor vehicle crashes*

MPD General Order 401.03 governs the Department's investigation of all traffic crashes in the District, including bike-motor vehicle crashes. MPD officers are required to investigate and prepare a crash report, also known as a PD Form 10, when a person is killed or injured in a traffic accident or where an involved motor vehicle sustains body or mechanical damage that renders the vehicle inoperable so that it must be towed from the scene.<sup>12</sup> When a PD Form 10 is mandated, the officer is required to locate the operators and witnesses as well as interview all such individuals.<sup>13</sup> If an injured person is transported from the scene of an accident to a hospital, an officer must arrange to interview the individual and the treating physician.<sup>14</sup> According to the directive, officers are required to complete an investigation and report before the end of their shift.<sup>15</sup> If the officer obtains additional information after submitting the report, the officer is

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<sup>12</sup> MPD General Order 401.03 (effective Sept. 23, 2009), V.A.1.

<sup>13</sup> *Id.* at V.C.2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*



required to submit the supplemental information on a PD 252.<sup>16</sup>

OPC requested from MPD all bicycle-motor vehicle PD Form 10 crash reports completed by MPD officers from January 2010 to December 2012, a three-year period. In response, OPC received a total of 1,198 crash reports. These reports, however, were completed by MPD officers from January 2011 to November 2012, a 23-month time frame, instead of the three-year period requested by OPC. OPC did not receive the year 2010 and December 2012 information from MPD. OPC randomly selected 120 reports from the total of 1,198 reports (approximately 10 percent) to review in order to determine whether officers were interviewing injured cyclists and submitting PD 252s where necessary.

In 76 of the 120 reports, cyclists were interviewed at the scene. In only one report did it appear that the bike rider was interviewed at the hospital. In that report, the officer included the cyclist's perspective in the report narrative, and the report was completed the same day as the crash. In 30 other reports, it was either unclear or ambiguous whether the bicyclist was interviewed at all. And in 12 other reports, the MPD officer completing the report was unable to interview the cyclist.<sup>17</sup> A PD 252 was not submitted in any of the 120 reports.

It was not unusual that most of the reports reviewed in the random sample did not have PD 252s submitted since the majority of the cyclists in those incidents were interviewed at the scene. In an effort to determine whether officers were submitting PD 252s where warranted, OPC identified four reports where the officer was clearly unable to interview the bike rider at the scene due to the extent of the person's injuries. Two of the reports were identified from the random sample; the remaining two reports were identified as a result of the cyclists testifying about their accidents at the February 2011 Public Safety Committee hearing. In three of the four reports, there was no record of the bicyclist ever being interviewed or a PD 252 being submitted,

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<sup>16</sup> *Id.* A PD 252 is a report that MPD officers use to record additional information obtained during an investigation.

<sup>17</sup> The remaining report involved a motor vehicle hitting a parked bike.

even though the bike rider in one of these reports testified at the February 2011 hearing that an MPD officer came to the hospital and spoke to her about the incident. In the fourth report, the crash report submitted by the MPD officer included a narrative that provided both parties' accounts. The cyclist, however, testified at the February 2011 hearing that the officer mischaracterized information in the report, and there was no separate PD 252 submitted.

MPD also conducted its own search for PD 252s, but could not find any.<sup>18</sup> When OPC asked the Department why, in general, no PD 252s could be located, MPD responded that although the crash reports could be completed online, the PD 252s had to be submitted on paper prior to September 2012. The PD 252 was then filed and stored separately from the PD Form 10 crash report. Starting in September 2012, PD 252s could be stored electronically as well (although not in the same database as the PD Form 10s). In February 2013, MPD set up a special e-mail box for PD 252s to make the reports easier to identify and locate. The Department also plans to issue a teletype to officers reminding them to submit supplemental information on PD 252s.

As noted previously, in most of the 120 cases randomly sampled by OPC, MPD officers interviewed cyclists who were involved in an accident. These interviews were done at the scene, and typically involved bike riders who suffered either no injuries or minor injuries. In 30 of these cases, however, as also pointed out above, it was difficult to determine from the PD Form 10 crash report whether the MPD officer ever interviewed the bike rider. One piece of information that would make it easier to tell whether the cyclist was interviewed would be to have the officer state in the report narrative what each party told the officer.<sup>19</sup> Approximately 15 percent of the total number of reports that OPC reviewed in its sample provided a synopsis of the incident without indicating the parties who provided the information, or simply stated, "the investigation revealed ..." and went on to summarize the crash.

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<sup>18</sup> It is unclear what the time period of MPD's search entailed.

<sup>19</sup> Although much of the crash report consists of small data fields that the officer has to complete, near the end of the report there is a large data field that allows officers to provide more information about the crash.

Therefore, MPD should include in crash reports narratives that detail the account given by each party. Reports that give a synopsis of the incident or state, “the investigation revealed . . .” and provide a brief summary should be discouraged. For those reports where officers have to go to the hospital and take a statement after the end of their shifts, MPD should remind its members that a PD 252 should be completed and sent to the newly-created electronic mailbox. Finally, for those crashes that are highly disputed and result in major injury to at least one of the parties, MPD should encourage officers to complete a witness statement, or PD 119. It helps insulate the officers from claims that they have mischaracterized information given to them. It may also be helpful to cyclists or motorists who wish to file insurance claims or pursue legal action as a result of injuries sustained in a crash. Finally, MPD should create an electronic mailbox for these PD 119s so that they can be easily stored and retrievable by the Department.

### *C. MPD’s implementation of PCB recommendations*

In its September 2011 report, PCB made a number of recommendations to the Department. The Board proposed that MPD: 1) change its method of investigating bicycle-motor vehicle crashes in order to provide appropriate safeguards for bicyclists who are injured and, in furtherance of this goal, revise General Order 401.03 to allow officers to leave crash reports as pending until all necessary statements are obtained; 2) include a bicycle-specific field on the PD Form 10 crash report; 3) better train officers on the applicable bicycling laws to ensure that they are properly enforcing the District’s bike regulations; and 4) increase its participation in BAC. The Board also recommended that BAC strengthen the effectiveness of the existing task force.

In PCB’s Fiscal Year 2012 Annual Report, issued on February 25, 2013, the Board reported on the implementation status of its recommendations. Specifically, MPD had revised General Order 401.03. Although the Department rejected PCB’s recommendation that crash reports remain pending, according to MPD, the new order clarifies that all parties must be

interviewed and requires that officers fill out supplemental reports when statements are later obtained.

MPD did not include a bicycle-specific field on the PD 10 crash report. The Department maintained that the current data fields could be searched for bicycles, allowing for adequate research and analysis, and that the fields already allow for selections that fit bicycle crashes. In rejecting this proposal, however, MPD acknowledged the need for greater emphasis on assisting officers to prepare better narratives so that all involved parties are interviewed and bicycle-related offenses are properly charged.

With respect to continuing to train officers on bicycle safety, MPD reported that it has increased roll call training, completed a training module in 2011, and has nearly completed a new training program with video-based scenarios, as suggested by the BAC Safety Committee after it reviewed the 2011 module. MPD also stated that more WABA books have been printed and distributed, and that a copy has been posted on and can be viewed from MPD's intranet.

The Department further stated that it has strengthened its involvement with BAC. MPD reported having representatives attend BAC meetings and actively participate in BAC-hosted online discussions. The Department also stated that it has used bike-mounted officers to engage the cycling community in an effort to conduct better outreach. MPD described its participation with BAC as "solid," while BAC stated that MPD is now the most engaged it has been in the past 20 years.

PCB will continue to monitor MPD's progress in implementing the proposals specifically outlined in the Board's September 2011 report and set of recommendations, and provide updates in the Board's forthcoming annual reports. Given MPD's control over and access to relevant citizen complaint and crash information, as well as Departmental policies and training regarding crash investigations and enforcement of the bicycle regulations, PCB urges the Department to undertake a more proactive and self-directed approach to addressing the issues noted in the

Board's previous report and in this report, as well as bicycle safety and enforcement matters in general.

To that end, PCB recommends that MPD provide a report to the District Council's Public Safety Committee each year that includes, at a minimum,<sup>20</sup> the following information: 1) the number of riding abreast tickets and other bike-related citations issued by MPD officers, including citations given to motorists who park in bike lanes, and the steps taken by the Department to reduce errors in issuing tickets; 2) the total number of bike-motor vehicle crash reports completed by MPD officers, the number of bike-motor vehicle crash reports where PD 252s or PD 119s were submitted, and the steps taken by MPD to ensure that officers are submitting supplemental information where warranted; and 3) the number of complaints filed with MPD regarding its investigation of bike-motor vehicle crashes and the resolution of those complaints. In addition, we recommend that the report include as attachments actual copies of any directives, training materials, or other documents created to address the issues noted in 1 and 2 above. Finally, MPD should consult with BAC and WABA in the development of the report's template and the areas to be covered.

### **III. RECOMMENDATIONS**

To summarize, after reviewing MPD practices regarding the issuance of "riding abreast" citations, investigating bicycle-motor vehicle crashes, and hearing from the Department regarding its implementation of the Board's 2011 proposals, PCB makes the following recommendations. These recommendations are organized into the three areas that comprise the

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<sup>20</sup> Cycling is growing in popularity in the District. Three percent of city residents biked to work in 2010 and there were 56 miles of designated bike lanes as of 2012. These numbers continue to grow. The number of reported bike crashes in the District has also been on the rise, going from 264 reported incidents in 2006 to 435 incidents in 2012. See District Department of Transportation, District of Columbia Bike Program Fact Sheet, [http://ddot.dc.gov/DC/DDOT/Publication%20Files/On%20Your%20Street/Bicycles%20and%20Pedestrians/Bicycle%20FactSheet\\_Summer2012.pdf](http://ddot.dc.gov/DC/DDOT/Publication%20Files/On%20Your%20Street/Bicycles%20and%20Pedestrians/Bicycle%20FactSheet_Summer2012.pdf). As more and more people bike on District roads, cyclist-police officer interactions will certainly increase. As a result, MPD and the District Council's Public Safety Committee should be alert to emerging bike-related issues, thus allowing the proposed report's covered areas to evolve over time.

“findings” section of this report.

*A. Review of MPD’s rate of error in citing “riding abreast” violations*

1. MPD officers should document the basis for riding abreast citations, as well as other bike-related citations, in the accompanying section for officer notes.
2. MPD supervisors should regularly review riding abreast citations to determine whether tickets are being issued improperly, and provide additional training to those offending officers or to the entire police force, as appropriate.

*B. Assessment of MPD officer investigative practices in bike-motor vehicle crashes*

1. MPD should include in crash reports narratives that detail the account provided by each party. Reports that provide a synopsis or state, “the investigation revealed . . .” and provide a brief summary should be discouraged.
2. For those reports where officers have to go to the hospital and take a statement after the end of their shifts, MPD should remind officers that a PD 252 should be completed and sent to the newly-created electronic mailbox.
3. For those crashes that are highly disputed and result in major injury to one of the parties, MPD should encourage officers to complete a PD 119.
4. MPD should create an electronic mailbox for these PD 119s so that they can be easily stored and retrievable by the Department.

*C. MPD’s implementation of PCB recommendations*

1. MPD should provide a report to the District Council Public Safety Committee each year that includes, at a minimum, the following information:
  - a. the number of riding abreast tickets and other bike-related citations issued by MPD officers, including citations given to motorists who park in bike

- lanes, and the steps taken by the Department to reduce errors in issuing tickets;
- b. the total number of bike-motor vehicle crash reports completed by MPD officers, the number of bike-motor vehicle crash reports where PD 252s or PD 119s were submitted, and the steps taken by MPD to ensure that officers are submitting supplemental information where warranted;
  - c. the number of complaints filed with MPD regarding its investigation of bike-motor vehicle crashes and the resolution of those complaints.
2. The report should also include as attachments actual copies of any directives, training materials, or other documents created to address the issues noted in a. and b. above.
  3. MPD should consult with BAC and WABA in the development of the report's template and the areas to be covered.