



**IMPLEMENTATION UPDATE ON THE
REPORTS AND RECOMMENDATIONS OF THE
POLICE COMPLAINTS BOARD
FROM FISCAL YEAR 2017
DECEMBER 18, 2018**

Executive Summary

The Police Complaints Board (PCB) is authorized by D.C. Code §5-1104(d) to make recommendations to the Mayor, the DC Council, and the chiefs of the Metropolitan Police Department (MPD) and District of Columbia Housing Authority Police Department (DCHAPD) in any areas affecting police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers. This authority allows the agency to examine broader issues that lead to the abuse or misuse of police powers. The PCB issues policy recommendations that address large-scale concerns about District law enforcement policies, training, or supervision. In addition, the PCB issues policy reports that address substantive or procedural law enforcement matters, which, if corrected, could greatly improve community trust in the police. At the close of fiscal year 2018, the PCB had issued 49 detailed reports with recommendations for police reform since its inception. All of the reports and recommendations are available on the Office of Police Complaints' (OPC) website.

Periodically, OPC reviews the actions that have been taken by the Mayor, the DC Council, and/or the chiefs of MPD and DCHAPD in response to previous recommendations. On February 1, 2018, at the request of the DC Council, OPC published an update on the implementation of reports and recommendations made by the PCB in fiscal years 2015 and 2016. The present report tracks the six reports and 16 separate recommendations made in fiscal year 2017 to the DC Council, MPD, and/or DCHAPD. These reports were:

- Ensuring MPD Policies and Procedures are Current; *Issued November 18, 2016*
- Language and Conduct; *Issued November 28, 2016*
- Notice of Infraction for Excessive Idling; *Issued January 3, 2017*
- District of Columbia Housing Authority Police Department Policy and Procedures; *Issued May 15, 2017*
- Blocking Passage; *Issued May 22, 2017*
- Consent Search Procedures; *Issued September 25, 2017*

OPC's review process included requests to MPD and DCHAPD to determine the status of the recommendations within the departments. In addition to this, OPC also took into account other information gleaned from interactions with the agencies, media reports, and any other additional pertinent information.

Based on this review of all relevant information, OPC found that of the 16 recommendations made in fiscal year 2017, five have been fully implemented, five are partially implemented, and six are not implemented. These findings are further explained in the contents of this report.

Ensuring MPD Policies and Procedures are Current

Issued November 18, 2016

Recommendation 1:

MPD should develop a plan to organize and review written directives on a periodic and scheduled basis. PCB suggests that MPD consider reviewing all general orders at least every other year, and making revisions when appropriate to keep them current and accurate. While not every policy will require biennial updates, a formal review process will still ensure that each policy is examined and a conscious decision is made as to whether or not revisions are required. The published policy should then state the last reviewed and/or revised date in the header, so that no policies appear to be untouched for 30 years, as is currently the case with many general orders.

Status According to MPD¹:

AGREE IN PART, IN PROGRESS

The Metropolitan Police Department (MPD) agrees that policies should be reviewed on a recurring schedule to ensure that they remain current and accurate. However, we do not agree that a biennial, comprehensive review of every general order, absent an identified issue or concern, would be a good use of our limited resources. We feel that a five year review for all general orders, assuming no issues are identified in the interim, is more appropriate, and we will continue to ensure republished orders clearly state the effective date of those orders.

OPC Response:

OPC considers this recommendation **partially implemented**. OPC is encouraged that MPD intends to review all general orders every 5 years, and this is a step toward full implementation of this recommendation. However, in order for there to be full implementation, the review date of the general orders must be made clear, even if no changes are made. Currently MPD has numerous General Orders that at least appear to still be over 20 years old, according to the dates in their headers.

Recommendation 2:

MPD should simplify the system for policies and procedures. Currently there are at least seven forms of written directives issued by MPD officials, and no easy way to cross reference between them. The current system can lead to confusion for both officers and the public as to whether or not there is policy guidance on a specific topic. Both MPD officers and the general public should be able to easily understand the system for written directives, and easily locate the directives that relate to a specific topic, no matter which format they may be in.

Status According to MPD:

AGREE, IN PROGRESS

MPD is eliminating the issuance of special orders and training bulletins to reduce the number and types of directives that we issue. MPD is also consolidating policies on similar topics as they are republished to reduce the number of policies we have and to ensure members and the public can easily locate directives by topic.

¹ All responses attributed to MPD or DCHAPD, throughout this report, are verbatim as received from the departments.

OPC Response:

OPC considers this recommendation **partially implemented**. In order for this recommendation to be fully implemented, MPD not only needs to reduce the types of documents, but also needs to clearly lay out a system for all members of the community to find information on MPD policies and procedures. As it currently stands, many of the general orders posted on the MPD website are scans of what appears to be typewritten documents, which means searching the documents is not possible, making it harder for people to find information they are seeking, particularly members of the public who may not already be familiar with MPD’s policies.

Recommendation 3:

MPD should ensure the implementation of an effective policy and procedure system and timely, periodic review through an accreditation process, such as CALEA. Accreditation involves an in-depth review of all policies and procedures, and creates a process for policy review going forward. The *Best Practices Guide: Developing a Police Department Policy-Procedure Manual* highlights CALEA as a source for national best practices in model polices. And, the accreditation process “proves an agency’s commitment to setting high standards and achieving operational excellence.”

Status According to MPD:

DISAGREE

Accreditation is an expensive, largely administrative process that detracts resources from the essential mission of safeguarding the city. Not only does the accreditation process require substantial resources to simply document administrative compliance with hundreds of CALEA standards – a process which in and of itself offers no direct public safety benefit for District residents – but it also requires significant time from our operational subject matter experts, detracting from actually safeguarding the city. There is no consequence to not being accredited and there are no persuasive benefits.

OPC Response:

OPC considers this recommendation **not implemented**. OPC continues to support accreditation for MPD as indicated in the original policy recommendation.

Language and Conduct

Issued November 28, 2016

Recommendation 1:

MPD should take steps to emphasize and reinforce the value and importance of proper language and conduct as an inherent part of the MPD culture to all incoming officers. This should include exploring increased different tactical communication and verbal de-escalation tactics, and training for them. MPD should also develop a method to evaluate the effectiveness of such training, and reassess their use, if necessary.

Status According to MPD:

AGREE, COMPLETE

MPD is committed to maintaining and building on the trust we've established with our community, and know that treating all people with dignity and respect is a key component of instilling that trust. MPD’s Metropolitan Police Academy (MPA) implemented scenario-based training (SBT) for all recruits in 2016; it includes a focus on de-escalation. In 2017, MPD

produced a mandatory online training module, “Professional Policing” that focused on proper communication with the public in the field. MPA’s new Field Training Program emphasizes cultural competency as part of the ongoing training that probationary officers receive after leaving the academy. While formal evaluations of training are not always practical, MPA continually evaluates and seeks feedback regarding the effectiveness of MPD training.

OPC Response:

OPC considers this recommendation **fully implemented**. While OPC approves of the efforts by MPD to train officers on communication skills and cultural competency, OPC advises MPD to develop a formal evaluation method for the training to best evaluate the effectiveness of the program.

Recommendation 2:

MPD should also assess whether new training should be implemented for all officers, or whether tactical communication, verbal de-escalation, stress management, or other training would better fit the department’s communication and interaction training needs. MPD should monitor new initiatives for effectiveness.

Status According to MPD:

AGREE, COMPLETE

MPD routinely provides training to our members on effective communication and interaction with the public. Daily roll call training topics covered in the last two years include professionalism, compassion in law enforcement, and communicating with the public at crime scenes. MPD’s mandatory online training module “Professional Policing” also reinforced communications with the public in the field. MPD will continue to monitor training for effectiveness and identify new training initiatives that support our commitment to fair, unbiased, and constitutional policing.

OPC Response:

OPC considers this recommendation **fully implemented**. MPD has enacted new trainings for language and conduct, however, MPD must continue to evaluate these trainings to ensure the continual relevancy of the issues officers are facing.

Recommendation 3:

MPD should update General Order 201.26 and remind officers of its content and importance. As a result of the potential ambiguities in what constitutes improper language, and the subjectivity, MPD clarifying the General Order may help officers to better understand and control their behavior. Additionally, the reminder can expand upon officer awareness of both verbal and non-verbal communication.

Status According to MPD:

DISAGREE

The Department remains, as always, committed to improving our policies and practices. However, the complaints cited by OPC in its report were sustained based on existing policy. We do not believe any specific changes are necessary to GO 201.26 in response to OPC’s report. Our policy is clear that disrespectful treatment of members of the public will not be tolerated.

OPC Response:

OPC considers this recommendation **not implemented**. In order for this recommendation to be fully implemented, GO 201.26 needs to be updated. GO 201.26 currently does not mention de-escalation, which both OPC and MPD agree is a vital part of an officer's job. Further, the current discussion of language in the general order is very specific to the actual words spoken, and does not address tone, volume, and other non-verbal communications that can cause an interaction to be offensive.

Notice of Infraction for Excessive Idling

Issued January 3, 2017

Recommendation 1:

MPD should take immediate action to further educate officers on Section 2418.3 of Title 18 of the DCMR, specifically the exception for private passenger vehicles. With options including:

1. Issue an updated circular that discusses the exception for private passenger vehicles, and does not merely quote it in the context of the full regulation;
2. Issue a teletype requiring that Section 2418.3 of Title 18 of the DCMR and the exceptions be read at roll call; and/or
3. Develop new training for officers on Section 2418.3 of Title 18 of the DCMR.

Status According to MPD:

AGREE, COMPLETE

MPD issued an updated circular on "Excessive Idling of Vehicles," on November 14, 2018, highlighting that the law does not apply to passenger vehicles.

OPC Response:

OPC considers this recommendation **fully implemented**.

District of Columbia Housing Authority Police Department Policy and Procedures

Issued May 15, 2017

Recommendation 1:

DCHAPD should update General Order 402 to reflect identification procedures used by members of the Metropolitan Police Department. MPD General Order 201.26 reads, "When requested to do so, members shall give their first and last name and badge numbers in a respectful and polite manner." The MPD general order requires that officers verbalize their identification. DCHAPD should incorporate the same standard as MPD to foster transparency, and build trust with the community, by having DCHAPD members promptly inform citizens of their names and badge numbers.

To further aid DCHAPD officers in easily identifying themselves, and projecting a professional image, DCHAPD should also require all officers to carry and utilize business cards, as MPD has required since July 19, 2016.

Status According to DCHAPD:

DCHAPD General Order 402 was updated by Special Order 17-01 dated April 27, 2017, which reflects the recommended changes.

402.1.2 Official Conduct

h. When requested to do so, members shall verbally provide their first and last name and badge number in a respectful and polite manner, and shall not make any attempt to conceal their name plate or badge number.

All DCHA [sic] sworn personnel and special police officers have been issued business cards for distribution to the public during their normal duties.

OPC Response:

OPC considers this recommendation **fully implemented**.

Recommendation 2:

DCHAPD should institute a body-worn camera program. Utilizing the lessons learned from the public process of creating the MPD policy and procedure will significantly reduce the practical problems associated with implementing a BWC program. In addition, the potential to combine equipment vendor contracts with MPD may produce a net cost savings.

Status According to DCHAPD:

DCHA continues to look into body-worn camera programs and possible means to finance the purchase and continuing operation of the program.

OPC Response:

OPC considers this recommendation **not implemented**. OPC understands that DCHAPD is interested in a BWC program, but is unable to finance procurement. OPC would still urge the DCHAPD to explore opportunities to work with MPD on the possibility of DCHAPD officers being a part of MPD's BWC program, as this would alleviate some of the fiscal restraints.

Recommendation 3:

DCHAPD should bring all policies and procedures up to date. Once this has been accomplished, DCHAPD should develop a plan to organize and review written directives on a periodic and scheduled basis. PCB suggests that DCHAPD review all policies and procedures at least every other year, and make revisions when appropriate to keep them current and accurate. A formal review process will ensure that each policy is examined and a conscious decision is made as to whether or not revisions are required. The published policy should then explicitly state the last reviewed and/or revised date.

Status According to DCAHPD:

The DCHAPD continues to update its General Orders to include the most recent updates of essential policies; General Order 501, Use of Force dated April 15, 2018; General Order 323, Vehicle Pursuits dated April 15, 2018; and General Order 316, Vehicle Operations dated April 15, 2018.

OPC Response:

OPC considers this recommendation **partially implemented**. OPC is encouraged that DCHAPD is

in the process of updating their General Orders, and that several essential policies have already been updated. OPC looks forward to DCHAPD's continued work to ensure that all policies are current, and then continually reviewed to remain current.

Blocking Passage

Issued May 22, 2017

Recommendation 1:

MPD require its officers to document any incident where a move along order and/or a blocking passage citation was issued, and the incident reports must detail how specifically the person was blocking passage.

Status According to MPD:

AGREE, COMPLETE

The Department agrees with this recommendation. The original policy on changes to the disorderly conduct law issued in 2011, Circular 11-01, and the associated training went further in recommending information for an arrest. MPD issued additional guidance on blocking passage in January of 2017, Circular 17-01, which reminded members of the elements required for the charge of blocking passage and also included reminders about how the law should be applied. Roll call training conducted in September of 2018 reinforced to members that they must detail in their arrest narratives how the person was blocking passage.

OPC Response:

OPC considers this recommendation **fully implemented**.

Recommendation 2:

MPD should provide additional training on the correct application of the statute as well as cultural and sensitivity training on the proper way to issue move along orders in a manner that promotes cooperation and decreases animosity.

Status According to MPD:

AGREE IN PART, COMPLETE

The examples that are provided in the report seem to point to communication and de-escalation skills that are addressed throughout our training curriculum, rather than specific cultural and sensitivity training needs. However, the correct application of blocking passage is covered in our recruit training and MPD also provided roll call training on blocking passage in September 2018.

OPC Response:

OPC considers this recommendation **partially implemented**. To be fully implemented, MPD must provide cultural and sensitivity training on the proper way to issue move along orders in a manner that promotes cooperation and decreases animosity.

Recommendation 3:

The Council of the District of Columbia should review the current statute and weigh the legislative intent against its effects on community trust since the law's passage in 2013. Consideration should be given to amending the law in order to better define the terms "crowding," "incommoding," and "obstructing" to reduce incongruity and more closely align with the Model Penal Code. Additionally, restructuring of the law should be considered so that, prior to issuing a move along order, the officer is required to observe:

(1) a pedestrian or vehicular presence currently or imminently being crowded, obstructed, or incomed by the actions of the suspect, 2) circumstances in which a reasonable person would be alarmed for the safety of persons or property in the vicinity, including but not limited to flight upon appearance of officer, a refusal by the suspect to identify themselves, or an attempt to conceal himself or an object, and 3) a refusal to provide a legitimate and reasonable explanation for his/her presence.

OPC Response:

OPC considers this recommendation **not implemented**. This recommendation was made to the Council and not one of the police departments. To date, no changes have been made to D.C. Code § 22-1307.

Consent Search Procedures

Issued September 24, 2017

Recommendation 1:

MPD should create a separate General Order on consent searches and update the PD Form 781 (consent search form). In addition to recording the incident on body-worn camera, the General Order should include mandatory utilization of a consent form for all types of consent searches. The consent search form should include at a minimum:

- a. A description of the subject’s right to decline the search, which can be read by or to the subject, to ensure consistency and accuracy.
- b. Signature of the individual consenting to the search.
- c. A description of the specific place or area that the officers are permitted to search (i.e. address, vehicle, person).

Status According to MPD:

AGREE IN PART, IN PROGRESS

The Department is examining whether the PD Form 781 needs to be updated. However, MPD disagrees that a separate general order covering consent searches is needed. General Order 702.03 (Search Warrants) provides instruction to our members on consent searches. The recommendation for a separate order seems predicated on incorrect interpretations about the existing order and an assumption that an order should include information that the Department handles in training.

Also, the Department does not agree that the use of consent forms should be mandatory. There is no consensus that requiring the signature of the search subject on the consent form is appropriate. In June 2016, MPD surveyed city police departments to determine their policies related to consent forms. While 11 of the 16 agencies that responded to the survey have a form similar to MPD, only Austin mandates getting a signature on the form prior to a search.

OPC Response:

OPC considers this recommendation to be **not implemented**. The discussion of consent searches that is currently contained in General Order 702.03 is limited and does not mention voluntariness. In order for this recommendation to be fully implemented, MPD must provide complete guidance on consent searches.

OPC maintains that a consent search form would ensure that search subjects are aware of their right to refuse a search, and this would also protect the validity of the consent search in court, which ultimately benefits MPD.

Recommendation 2:

With the mandatory use of a consent search form MPD and DCHAPD should track the following minimum data variables for all consent searches: location, time, circumstances, demographics of the subject and officers, and whether the search yielded contraband that resulted in an arrest. That data should be analyzed periodically to ensure that consent searches are conducted constitutionally and do not become the routine practice of officers, identify patterns and trends, and assist in training scenarios.

Status According to MPD:

DISAGREE

MPD does not agree that consent search forms should be mandatory.

OPC Response:

OPC considers this recommendation **not implemented**. Implementing consent search forms, evidencing consent for a search, will enable MPD, OPC, and the DC Council, to see if there are patterns in the practice of consent searches that necessitate further action.

Status According to DCHAPD:

PARTIALLY AGREE

While the Department agrees that consent searches must be conducted within Constitutional guidelines, and must be documented by the initiating officer. However we also realize that there are situations where an immediate consent search maybe required without the availability of a PD 781. Although the use of a PD 781 is preferable, and should be utilized whenever possible, the Department does not agree that the use of consent forms should be mandatory. DCHA [sic] has not received any complaints of 4th Amendment violations by its members.

OPC Response:

OPC considers this recommendation **not implemented**. Implementing consent search forms, evidencing consent for a search, will enable DCHAPD, OPC, and the DC Council, to see if there are patterns in the practice of consent searches that necessitate further action.

Recommendation 3:

MPD and DCHAPD should review training on consent searches, and ensure that all training includes:

- a. Discussion of voluntariness of consent in terms of subjective factors like age, education, intelligence, and experience.
- b. Officer's conduct in obtaining consent to search, including what is and is not constitutionally permissible.
- c. How to properly use the consent search form.
- d. Discussion of how consent searches affect community trust in the police department.

Status According to MPD:

AGREE, COMPLETE

All MPD recruits receive training on the principles governing consent searches. The training topics include the concepts of voluntary consent, intelligent consent, authority to conduct consent

searches, and how to document the encounter. In 2017, MPD produced a mandatory online module for sworn members titled “Searches, Warrants, and Body Worn Cameras” focusing on constitutional protections surrounding warrants and searches. Also, in 2018’s mandatory professional development training, MPA included Fourth and Fifth Amendment scenarios in which searches were discussed at length to include consent searches. Topics included who can consent to a search, who cannot consent, and how to document consent searches.

OPC Response:

OPC considers this recommendation **partially implemented**. OPC is encouraged by the fact that MPD has been working to improve the training for officers regarding consent searches, but there still appears to be some improvements regarding officers’ documentation of searches. While MPD currently does not require a consent search form, documentation of a search is still mandatory (see GO 702.03 at page 18). OPC continues to see several incidents where a search was not documented, and when questioned, the officers state the BWC footage is the documentation, but this is in violation of the MPD BWC policy (see GO 302.13 at page 6) and shows a disconnect between training and practice. To be fully implemented, MPD must ensure that all officers are trained on the proper procedures for consent searches, as outlined in the recommendation. MPD must also ensure that training includes discussion of how consent searches affect community trust in the police department.

Status According to DCHAPD:

AGREED AND IMPLEMENTED

All DCHAPD sworn officers receive training on the principles governing consent searches while in the MPD Training Academy. The training topics include the concepts of voluntary consent, intelligent consent, authority to conduct consent searches, and how to document the encounter. Special Police Officers receive training on consent searches as part of their initial training and both groups are also issued copies of “Briefs of Leading Cases in Law Enforcement 9th edition” as part of their mandatory training in service training. Chapter 8 (Searches with Consent), covers consent searches. DCHA is also in the process of drafting a Special Order outlining the agency policy on conducting consent searches.

OPC Response:

OPC considers this recommendation **partially implemented**. OPC appreciates the steps that have been taken to ensure that DCHAPD officers are trained on the concepts associated with a consent search. However, to be fully implemented, DCHAPD must incorporate those trainings and this recommendation into their Special Order outlining the agency policy on conducting consent searches that is currently being drafted. DCHAPD must also ensure that training includes discussion of how consent searches affect community trust in the police department.