IMPLEMENTATION UPDATE ON THE

REPORTS AND RECOMMENDATIONS OF THE

POLICE COMPLAINTS BOARD

FROM FISCAL YEAR 2021

MARCH 7, 2023

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. 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 2022, the PCB had issued 64 detailed reports with recommendations for police reform since its inception. All reports and recommendations are available on the Office of Police Complaints (OPC) website.

Annually, 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 the PCB's previous recommendations. Beginning 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. OPC continues these periodic reviews to promote transparency and ensure that all parties, including community members, are informed of the policy changes that are and are not being made each year in response to recommendations made by the PCB. OPC published these additional implementation updates:

- Implementation Update on the Reports and Recommendations of Police Complaints Board From Fiscal Year 2017; *published December 18, 2018*
- Implementation Update on the Reports and Recommendations of Police Complaints Board From Fiscal Year 2018; *published February 6, 2020*
- Implementation Update on the Reports and Recommendations of Police Complaints Board From Fiscal Year 2019 and a Reexamination of Implementation Updates from Fiscal Years 2015-2018; *published February 8, 2021*
- Implementation Update on the Reports and Recommendations of Police Complaints Board From Fiscal Year 2020; *published February 14, 2022*

The current report tracks the three reports with 9 separate recommendations made in fiscal year 2021 to the DC Council and MPD. These reports were:

- Stop and Frisk Data Review; *Issued October 5, 2020*
- Discipline*; Issued October 14, 2020*
- Marijuana Drug Detection Canines; *Issued July 8, 2021*

OPC's review process includes requests to MPD to determine the status of the recommendations within the department and an examination of any laws passed by the DC Council that are relevant to the recommendations made by the PCB. In addition to this, OPC also considered other information gleaned from interactions with MPD, media reports, and any other additional pertinent information.

Based on the review of all relevant information, OPC found that of the 9 recommendations made in fiscal year 2021, five have been fully implemented, two have been partially implemented, and two are not implemented. These findings are further explained in the contents of this report.

Stop and Frisk Data Review
Issued October 5, 2020

Recommendation 1:
MPD should immediately make public any steps already taken to initiate a comprehensive analysis of the stop data. This should include entities MPD has consulted with on their plan, and what issues, if any, have caused the delay in starting the analysis.

Status According to MPD, January 2022[1]:

Complete.

As noted in our initial response, MPD requested Georgetown University and Howard University, in partnership with The Lab @ DC, to lead this effort to ensure District residents receive an independent, rigorous product from experts in the field. The seven-part workshop series, "Reimagining Police Stops", was held in late 2021 with more than 100 participants including community leaders, advocates, and police officers.

OPC Response:

OPC considers this recommendation partially implemented. This recommendation is related to publicizing the steps MPD has taken to initiate a comprehensive analysis of its stop data, including the entities MPD has consulted with on their plan, and what issues, if any, have caused the delay in starting the analysis. OPC is encouraged by MPD's announcement of partnerships with Howard University, Georgetown University, and The Lab @ DC to assist in analyzing the stop data and the Reimagining Police Stops workshop held in 2021. However, MPD has not published an annual Stop Data Report since September 2021 and the deliverables discussed in the report have yet to be published despite the report's estimate of completion in Fall 2021.[2] Furthermore, MPD has not publicly offered any reasons or explanations for this delay. This recommendation will not be fully implemented until MPD publishes the comprehensive analysis of its stop data or at the very least publishes an explanation for the delay in doing so.

Recommendation 2:
MPD must continue to keep the public apprised of the progress of this comprehensive analysis through regular updates to the Stop Data Report page on the MPD website. While it is understandable that an examination of the data may be a time-consuming process, MPD must be as transparent as possible about the status of this work, including any existing partnerships undertaken to analyze data. This should include, at a minimum, identifying the entities performing the review, the cost of the review, and the expected date of completion.

Status According to MPD:

In Progress.

As reported to MPD by the groups coordinating this effort, the draft deliverables, the Reimagining Police Stops Workshop: A White Paper, Policy Recommendations for Reducing Harm, a Learning Agenda and Measurement Guide, were shared with the workshop participants in August 2022 for their input. Representatives from The Lab, Howard University, and Georgetown University worked this fall to incorporate feedback from participants, and the documents are now undergoing final editing and formatting. They expect to release the documents in the second quarter of FY23.

OPC Response:

OPC considers this recommendation not implemented. This recommendation is related to

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[1] All responses attributed to MPD, throughout this report, are verbatim as received from the department.

[2] Available here: https://mpdc.dc.gov/stopdata

continually keeping the public apprised of MPD's progress on the comprehensive analysis of its stop data through regular updates to the Stop Data Report page on the MPD website. OPC is encouraged by MPD's response regarding its ongoing collaboration with Howard University, Georgetown University, and The Lab @ DC to complete the comprehensive analysis of its stop data. However, as previously discussed, MPD has not published an annual Stop Data Report since September 2021 and the estimated timeframe of completion for the comprehensive analysis provided in the report passed over a year ago. Although MPD provided an update on the report to OPC in its response, to date, MPD has not updated its website to provide the public with any explanations for the delay, information about the cost of the review, or the revised 2023 expected date of completion.

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Discipline
Issued October 14, 2020

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Recommendation:
The PCB recommends that the DC Council consider reviewing the process by which discipline is determined for OPC sustained complaints. A public discussion on what the community desires for outcomes in police complaints would be beneficial in improving the current process. One process the PCB believes would correct the current inequities is to amend DC Code §5-1112 to include a revised procedure for determining the level of discipline for sustained allegations of misconduct based on complaints made to OPC, as outlined below. This procedure is like those of Oakland and Chicago. The basic framework of this process for the District would be as follows:

1. Complaint Examiner sustains an OPC complaint,
2. OPC transmits this finding to MPD or the DC Housing Authority Police Department (DCHAPD) along with a discipline recommendation from the Executive Director for the misconduct,
3. MPD or DCHAPD is permitted time to review the case and either accept the discipline recommendation or find a more severe penalty and impose it, or oppose the OPC recommendation with a written explanation,
4. If MPD or DCHAPD opposes the OPC recommendation and wants a less severe penalty then the written explanation is sent to OPC for review,
5. MPD or DCHAPD and OPC discuss their positions on discipline determinations and work toward a mutual agreement,
6. If MPD or DCHAPD and OPC cannot agree, then the case is forwarded to a panel comprised of three members of the PCB for review,
7. The PCB panel can accept the discipline recommendation of either OPC, MPD/DCHAPD, or reach a decision on a compromise discipline,
8. MPD or DCHAPD imposes the discipline decision approved by the PCB panel.

OPC Response:
OPC considers this recommendation partially implemented. On December 20, 2022, the DC Council unanimously voted to pass B24-320, Comprehensive Policing and Justice Reform Amendment Act of 2021, "to provide for comprehensive policing and justice reform for District residents and visitors."[3] The bill was transmitted to Congress for 60-day review on January 26, 2023, with a projected law date of May 11, 2023. The bill included amendments to DC Code § 5–1111 and § 5–1112 that significantly alter the disciplinary procedure for sustained OPC complaints. The amendments created the following disciplinary framework for sustained OPC complaints:

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[3] Available here: B24-0320 - Comprehensive Policing and Justice Reform Amendment Act of 2021 (dccouncil.gov)

1. Complaint Examiner sustains an OPC complaint.
2. OPC transmits this finding to the designated agency principle of MPD, DCHAPD, or OIG with a recommendation of discipline to be imposed on the subject officer.[4] The disciplinary recommendation will be informed by OPC's review of the most recent disciplinary policies and procedures from the subject officer's law enforcement agency and a review of the subject officer's complete personnel file, including any record of prior misconduct.
3. Within 15 business days after receiving the complaint file, officials at the law enforcement agency will make a written recommendation, with supporting reasons, regarding the appropriate discipline to be imposed on the subject officer and transmit it to the designated agency principle.
4. Within 5 business days after receiving the disciplinary recommendation, the designated agency principle will notify the complainant and the subject officer of the proposed discipline and allow them a reasonable time to file a written response.
5. The designated agency principle will then consider the written responses received from the complainant and the subject officer, along with OPC's recommendation, before making a final determination.
6. The designated agency principle will issue a final written decision on the appropriate discipline within 15 business days after receiving the responses or within 15 business days of the deadline set for receipt of the responses, whichever is earlier.
7. The written decision must provide the rationale for imposing or not imposing the discipline recommended by OPC.
8. The designated agency principle imposes the final discipline on the subject officer.

Although OPC is greatly encouraged by the progressive changes the DC Council made to the disciplinary process for sustained OPC complaints in the bill, the new framework still leaves the final decision on discipline exclusively in the hands of the law enforcement agencies. As OPC stated in the report, when a law enforcement agency is the only entity involved in the disciplinary process, it can give the community the impression that the law enforcement agency does not take community complaints seriously. However, OPC is eager for the changes that were adopted to go into effect in order to see how they impact the disciplinary process. OPC will continue to keep the Council apprised of this issue and recommend modifications as needed.

Marijuana Trained Drug Detection Canines
Issued July 8, 2021

Recommendation 1:
MPD should not deploy canines trained in marijuana detection in any way that would infringe upon the rights of the public, such as for sweeps or searches of persons or vehicles.

Status According to MPD:
> **Complete.**
> MPD no longer deploys patrol canines trained to detect marijuana for drug detection/sweeps. However, as noted in our original response, we may assign dogs trained in marijuana detection to our Violent Crime Suppression Division (VCSD) to support significant narcotics investigations. As always, their handlers will be trained in constitutional operations.

OPC Response:
> OPC considers this recommendation fully implemented. However, if MPD decides to assign any

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[4] Currently OPC and the PCB only have jurisdiction over MPD and DCHAPD. B24-320 expands this jurisdiction to include certain OIG officers.

canines trained in marijuana detection to support its Violent Crime Suppression Division (VCSD) in significant narcotics investigations, it should take measures to ensure the VCSD trains, certifies, and utilizes them in ways that adhere to the recommendations in the report and only in cases where there is probable cause to believe a suspect is in illegal possession of marijuana.

Recommendation 2:
After probable cause has been established, MPD may deploy marijuana trained canines for a sweep, but probable cause must be established prior to and independently from utilizing a canine trained in marijuana detection.

Status According to MPD:
> **Complete.**
> As described above, MPD no longer deploys patrol canines trained to detect marijuana for drug detection/sweeps.

OPC Response:
> OPC considers this recommendation <mark>fully implemented</mark>. However, if MPD decides to assign any canines trained in marijuana detection to support its Violent Crime Suppression Division (VCSD) in significant narcotics investigations, it should take measures to ensure the VCSD trains, certifies, and utilizes them in ways that adhere to the recommendations in the report and only in cases where there is probable cause to believe a suspect is in illegal possession of marijuana.

Recommendation 3:
MPD should no longer train canines in marijuana detection at the academy, and any certification processes should no longer be dependent on the canine's ability to detect marijuana.

Status According to MPD:
> **Complete.**
> MPD no longer trains our patrol canines in marijuana detection. However, as noted above, dogs assigned to VCSD will continue to be trained to detect marijuana for significant narcotics investigations.

OPC Response:
> OPC considers this recommendation <mark>fully implemented</mark>. However, if MPD decides to assign any canines trained in marijuana detection to support its Violent Crime Suppression Division (VCSD) in significant narcotics investigations, it should take measures to ensure the VCSD trains, certifies, and utilizes them in ways that adhere to the recommendations in the report and only in cases where there is probable cause to believe a suspect is in illegal possession of marijuana.

Recommendation 4:
Any canines trained in marijuana detection that are currently employed by the MPD Canine Patrol Unit should be retired or repurposed for other departmental purposes and no longer be used as drug detection dogs.

Status According to MPD:
> **Complete.**
> The four canines in patrol that remain in-service that were trained to detect marijuana were repurposed. They are no longer used as drug detection dogs.

OPC Response:
> OPC considers this recommendation <mark>fully implemented</mark>.

Recommendation 5:
If MPD has or acquires any canine that has the ability to distinguish between the legal and illegal possession of marijuana and the possession of other illegal drugs would not be subject to this policy recommendation. However, the canine should undergo more frequent recertification processes and it should not be recommended to deploy them for sweeps, acting in an abundance of caution to protect against any risk of infringing on the reasonable expectation of privacy that DC residents have to lawfully possess marijuana.

Status According to MPD:
> **Not Applicable.**
> MPD does not have drug detector dogs that are trained to distinguish between legal and illegal possession of marijuana.

OPC Response:
> OPC considers this recommendation <mark style="background-color:green">fully implemented</mark>. MPD indicated in its previous responses that all canines trained to detect marijuana have been repurposed. However, if MPD decides to assign any canines trained in marijuana detection to support its Violent Crime Suppression Division (VCSD) in significant narcotics investigations, it should take measures to ensure the VCSD trains, certifies, and utilizes them in ways that adhere to the recommendations in the report and only in cases where there is probable cause to believe a suspect is in illegal possession of marijuana.

Recommendation 6:
MPD should update General Order 306.01and General Order 901.07 to reflect the above recommendations to ensure that the rights of community members who are abiding by the District's Special Order 15-07 are protected and are uncompromised by drug detection canine deployment.

Status According to MPD:
> **In Progress.**
> MPD is working on an update to General Order 306.01 (Canine Teams).

OPC Response:
> OPC considers this recommendation <mark style="background-color:red">not implemented</mark>. OPC is encouraged that MPD is currently drafting an updated version of General Order 306.01 (Canine Teams). However, this recommendation will not be fully implemented until MPD publishes the updated version of General Order 306.01 (Canine Teams) and publishes an updated version of General Order General Order 901.07 (Use of Force). The revised general orders should reflect the recommendations in the report and ensure that all MPD members are advised on the correct procedures for the use of canines.