



GOVERNMENT OF THE DISTRICT OF COLUMBIA OFFICE OF POLICE COMPLAINTS

Office of Police Complaints
Michael G. Tobin, Executive Director

POLICE COMPLAINTS BOARD
Paul Ashton, Chair
Bobbi Strang
Jeffrey Tignor
Earl Fowlkes, Jr.

PCB POLICY REPORT #23-1: Presidential Executive Order 14074

Summary of Issue:

The nationwide protests following the murder of George Floyd in 2020 led to a public outcry and grew the national movement demanding police reform on the federal, state, and local levels, placing the issue at the forefront of public discourse. In response to this movement, governments and police departments instituted various reforms designed to address the problem of police misconduct and eliminate systemic racial bias and unnecessary uses of force. For instance, in Washington, D.C. the D.C. Council passed D.C. Act 23-336, Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020¹ which, among other reforms, prohibited the use of neck restraints, improved access to body-worn camera recordings, expanded the jurisdiction of the Office of Police Complaints (OPC), expanded the membership of the Use of Force Review Board, repealed D.C.'s longstanding anti-mask law, placed limitations on consent searches, codified the Metropolitan Police Department's (MPD) existing hiring standards and training requirements², repealed the crime of Failure to Arrest, restricted MPD's ability to purchase and use military weaponry, and established a Police Reform Commission.

On May 25, 2022, President Joseph Biden signed Executive Order 14074, Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety, to "increase public trust and enhance public safety and security by encouraging equitable and community-oriented policing."³ Although the Executive Order applies primarily to federal law enforcement agencies, it incentivizes state and local police departments to adopt the best practices discussed therein.

Like several other large urban police departments, MPD has already adopted many of the best practices recommended in the executive order prior to its issuance. What follows is a general summary of the areas in which MPD may improve or accelerate its adherence to the recommendations discussed in the executive order. Where applicable, each section concludes with a policy recommendation to assist MPD in implementing the directives from the executive

¹ See <https://code.dccouncil.gov/us/dc/council/acts/23-336>

² According to MPD

³ Exec. Order No. 14074, 87 FR 32945 (2022). Available at <https://www.federalregister.gov/documents/2022/05/31/2022-11810/advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and>

order. Although the executive order consists of 23 sections, only Sections 2 thru 20 contain policy provisions. However, Sections 16 thru 18 and Section 20 narrowly apply to federal law enforcement agencies and do not provide much, if any, beneficial guidance to MPD. As such, Sections 1 thru 15 and Section 19 will be the only sections from the executive order that will be discussed in this report.⁴

Discussion and Recommendations:

Section 2: Sharing of Federal Best Practices with State, Tribal, Local, and Territorial Law Enforcement Agencies to Enhance Accountability

This section of the executive order requires the Office of the Attorney General, at the Department of Justice, to issue guidance and share federal best practices concerning investigations into civil rights violations and in-custody deaths with state, local, tribal, and territorial law enforcement agencies.

Recommendation: Whenever the Attorney General publishes new policing recommendations on civil rights violations and in-custody deaths, MPD should review them and implement the recommendations for any MPD directives that are not congruent with federal best practices on these topics.

Section 3: Strengthening Officer Recruitment, Hiring, Promotion, and Retention Practices

Section 3 of the executive order addresses the officer recruitment and retention crisis faced by law enforcement agencies across the nation. This section directs the Office of Personnel Management (OPM) to convene a working group to identify, develop, and share best practices for recruitment, promotion, retention, and evaluation of police officers. The executive order also directs the working group to develop best practices for screening procedures, background investigations, and selection procedures for new officers as well as ongoing screening procedures for current officers to “avoid hiring and retention of law enforcement officers who promote unlawful violence, white supremacy, or other bias against persons based on race, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), or disability.”⁵ Finally, Section 3 requires the Attorney General to consult with state, local, tribal, and territorial law enforcement agencies to develop guidance for recruitment, hiring, promotion, and retention best practices and incorporate them with the findings of OPM’s working group.

Recommendations: Like most law enforcement agencies across the nation, MPD has also experienced its own issues with respect to recruitment and retention of officers. In April 2022, after collaborating with MPD Chief Contee, Mayor Bowser announced that her FY23 budget would include various investments and incentives to address MPD’s ongoing recruitment and retention issues so MPD could reach its goal of 4,000 sworn officers within the next several

⁴ The Police Complaints Board (PCB) is issuing this report pursuant to D.C. Code § 5-1104(d), which authorizes the Board to recommend to the District of Columbia Mayor, Council, MPD Police Chief, and the Director of District of Columbia Housing Authority reforms that have the potential to improve the complaint process or reduce the incidence of police misconduct.

⁵ Exec. Order No. 14074 at 32948

years. Although the PCB believes the incentives, investments, and strategies contained in the FY23 budget will go a long way to assist MPD with its recruitment and retention problems, the PCB also believes MPD would greatly benefit from participating in the consultations between the Office of the Attorney General and other law enforcement agencies. Therefore, the PCB recommends:

- (1) MPD should actively participate in the consultations between the Office of the Attorney General and other law enforcement agencies. By doing so, the PCB believes MPD could potentially learn about other successful programs and strategies that have helped other law enforcement agencies reach their staffing goals.
- (2) MPD should implement any final recommendations of the OPM working group and the Attorney General's office that have not already been incorporated into its own hiring and retention procedures.

Section 4: Supporting Officer Wellness

Section 4 orders the Attorney General to consult with the Secretary of Health and Human Services (HHS) “to develop and publish a report on best practices to address law enforcement officer wellness, including support for officers experiencing substance use disorders, mental health issues, or trauma from their duties.”⁶

Recommendation: The PCB acknowledges that MPD has always highly prioritized the physical and mental well-being of its officers. MPD further demonstrated its commitment to promoting officer wellness when it created the position of Director of Employee Well-Being Support in 2021. Nevertheless, MPD should review and implement the best practices recommended in any HHS report to enhance its own officer wellness policies once they are published.

Section 5: Establishing a Law Enforcement Accountability Database

Section 5 directs the Attorney General to create and maintain a National Law Enforcement Officer Accountability Database for all federal law enforcement officers “as a centralized repository of official records documenting instances of law enforcement officer misconduct as well as commendations and awards.”⁷ The database will comply with the Privacy Act of 1974 while preserving and protecting the due process rights of the officers. It will include information about “records of criminal convictions; suspension of a law enforcement officer’s enforcement authorities, such as de-certification; terminations; civil judgments, including amounts (if publicly available), related to official duties; and resignations or retirements while under investigation for serious misconduct or sustained complaints or records of disciplinary action based on findings of serious misconduct.”⁸ The database will only be available to federal, state, local, tribal, and territorial law enforcement agencies for the purpose of screening current or potential employees and will not be publicly accessible. Section 5 also requires the Attorney General to publish an annual report about the information in the database while maintaining officers’ anonymity. This section also establishes a process for officers to petition for amendment or removal of

⁶ *Id.* at 32949

⁷ *Id.* at 32950

⁸ *Id.*

information about themselves that is erroneous or if the underlying proceeding lacked appropriate due process protections. Finally, Section 5 authorizes the Attorney General to encourage state, local, tribal, and territorial law enforcement agencies to utilize the database during the hiring process and provide guidance and technical assistance on its use.

Recommendations:

- (1) MPD should integrate National Law Enforcement Officer Accountability Database queries into its screening process for new employees when it becomes available.
- (2) MPD should also review the Attorney General’s annual report to identify any national trends of misconduct among law enforcement officers and utilize the data to evaluate and improve its own training programs.

Section 6: Improving Use of Force Data Collection

Section 6 requires the heads of federal law enforcement agencies to submit monthly data to the FBI’s National Use of Force Database and directs the Attorney General to establish guidelines and best practices for collecting and publishing anonymized data about use of force incidents involving federal law enforcement officers. This section also requires the Attorney General and the United States Chief Technology Officer to work with state, tribal, local, and territorial law enforcement agencies to identify obstacles to their participation in the Use of Force Database, reduce the administrative burden of reporting data, and to provide training and technical assistance to those law enforcement agencies to encourage and facilitate their regular submission of use of force data to the database. In addition, the Attorney General shall provide training and technical assistance to state, local, tribal, and territorial law enforcement agencies to encourage their submission of data to the FBI’s Law Enforcement Officers Killed and Assaulted (LEOKA) database, which the FBI uses to train state, tribal, local, and territorial law enforcement officers through its Officer Safety and Awareness Training Program.⁹

Recommendations:

- (1) The PCB recognizes that MPD has already incorporated some of the data points listed in the executive order into its own use of force data collection process. However, MPD should still review the Attorney General’s best practices for collecting use of force data once they are established and incorporate into its process any additional data points it does not currently collect in order improve its own data collection.
- (2) The PCB also recognizes that MPD currently submits data to the FBI’s LEOKA and National Use of Force databases. The PCB recommends that MPD continue to participate in the submission of data to the FBI’s LEOKA and National Use of Force databases. The FBI uses this information to improve its Officer Safety and Awareness Training Program for federal, state, local, tribal, and territorial law enforcement agencies and MPD’s continued participation would likely contribute to the program’s success.
- (3) MPD should utilize the FBI’s Officer Safety and Awareness Training Program in the training of its own officers.

Section 7: Banning Chokeholds and Carotid Restraints

⁹ For more information, please visit <https://leb.fbi.gov/file-repository/leoka-officer-safety-awareness-training.pdf/view>

This section requires all federal law enforcement agencies to ban the use of chokeholds or carotid restraints except in situations where deadly force would be authorized. MPD has already banned the use of neck restraints in General Order 901.07.¹⁰

Section 8: Providing Federal Law Enforcement Officers with Clear Guidance on Use of Force Standards

Section 8 of the executive order requires federal law enforcement agencies to adopt the Department of Justice’s (DOJ) Use of Force Policy¹¹ and provide annual training to officers and “implement early warning systems or other risk management tools that enable supervisors to identify problematic conduct and appropriate interventions to help prevent avoidable uses of force; and ensure the use of effective mechanisms for holding their law enforcement officers accountable for violating the policies.”¹²

Recommendations:

- (1) MPD’s current use of force policy is congruent with the current Department of Justice guidelines. In addition, MPD has implemented the Supervisor Support Program, which enables supervisors to identify problematic conduct from officers and conduct interventions to prevent unnecessary use of force incidents.¹³ However, the PCB believes MPD should still periodically review the early warning systems utilized by federal law enforcement agencies to ensure its procedures are consistent with national best practices and to identify any opportunities for improvement.
- (2) MPD should also implement any best practices identified during these reviews that have not already been incorporated into its early warning system. This will allow MPD supervisors to better identify and correct any troublesome conduct from its members with respect to use of force incidents.

Section 9: Providing Anti-Bias Training and Guidance

This section requires OPM and the Attorney General to create and implement training programs on implicit bias and how to avoid improper profiling based on constitutionally protected traits.

Recommendation: The PCB is aware that MPD has incorporated similar trainings for its members over the past several years. However, MPD should review the anti-bias programs created by OPM, the Attorney General, and other law enforcement agencies to determine whether there are opportunities to improve its own training modules.

Section 10: Restricting No-Knock Entries

¹⁰ Available here: https://go.mpdonline.com/GO/GO_901_07.pdf

¹¹ Available here: https://www.justice.gov/d9/pages/attachments/2022/05/23/departments_updated_use-of-force_policy.pdf

¹² Exec. Order No. 14074 at 32952

¹³ See Metropolitan Police Department, General Order 120.28, Personnel Performance Management System (PPMS) and the Supervisory Support Program (SSP) (February 1, 2019), available at https://go.mpdonline.com/GO/GO_120_28.pdf

Section 10 requires federal law enforcement agencies to adopt the DOJ’s guidelines on the limited use of no-knock warrants¹⁴ or adopt policies that exceed the guidance from the DOJ.

Recommendation: Although MPD’s policies and procedures have sufficiently limited the use of no-knock warrants and comply with the DOJ’s guidelines, MPD should periodically review of the policies, procedures, and best practices of other law enforcement agencies to determine whether there are opportunities to improve its own directives.

Section 11: Assessing and Addressing the Effect on Communities of Use of Force by Law Enforcement

This section directs the Secretary of HHS to conduct a nationwide study on the effects of use of force incidents on communities. It also requires the Attorney General to develop best practices and issue guidance to state, local, tribal, and territorial law enforcement agencies for planning and conducting dialogues with the communities in which they police to improve communication, especially in the wake of a use of force incident. Finally, Section 11 requires the Attorney General to develop best practices for “providing official notification of deaths in custody, on best practices to promote the timely and appropriate notification of, and support to, family members or emergency contacts of persons who die in correctional or LEA custody, including deaths resulting from the use of force.”¹⁵

Recommendation: Creating and maintaining open channels of communication with the community will help to increase the public’s trust in MPD while providing MPD with direct feedback about how use of force incidents affect the people they are sworn to protect and serve. Therefore, MPD should review HHS’s study on the effects of use of force incidents on communities and implement the Attorney General’s best practices on dialogues with the community and proper notification of deaths resulting from use of force incidents once they are published.

Section 12: Limiting the Transfer or Purchase of Certain Military Equipment by Law Enforcement

Section 12 prohibits the transfer or use of federal grant funds to purchase certain law enforcement equipment and requires federal law enforcement agencies to review their policies on transferring equipment to state, local, tribal, and territorial law enforcement agencies. This section also provides a list of equipment prohibited for use by federal law enforcement agencies. Under DC law, MPD is already prohibited from using the equipment listed in this section of the executive order.¹⁶

Section 13: Ensuring Appropriate Use of Body-Worn Cameras and Advanced Law Enforcement Technologies

¹⁴ Available here: <https://www.justice.gov/media/1166216/dl?inline=>

¹⁵ Exec. Order No. 14074 at 32953

¹⁶ See <https://code.dccouncil.gov/us/dc/council/code/sections/5-361.01>

This section requires the heads of federal law enforcement agencies to develop policies and procedures for body-worn cameras (BWC) and other surveillance equipment that are consistent with DOJ guidelines.¹⁷ It also requires the Attorney General and the National Academy of Sciences to conduct a study on law enforcement technology and its appropriate use.

Recommendation: The PCB recognizes that MPD’s current BWC program is consistent with DOJ polices. However, OPC’s data on MPD officers’ BWC use indicates there are still opportunities for improvement with respect to compliance with MPD’s BWC policies and procedures.¹⁸ Although MPD’s directives are consistent with DOJ best practices, MPD should continue to enforce its directives to ensure compliance by its officers and promote transparency and accountability among its members.

Section 14: Promoting Comprehensive and Collaborative Responses to Persons in Behavioral or Mental Health Crisis

Section 14 requires the Attorney General and Secretary of HHS to consult with the heads of federal law enforcement agencies, non-profit organizations, service providers, and other law enforcement entities to develop best practices for interacting with persons suffering from behavioral or mental health crises or other disabilities. This section also directs the Attorney General to issue guidance on this topic to state, local, tribal, and territorial law enforcement agencies.

Recommendation: Although MPD has already established a robust policy for interactions with individuals suffering from mental health crises, including the establishment of its Crisis Intervention Officer program, MPD should continue to enhance its policy by reviewing and incorporating the best practices recommended by the Attorney General once they are disseminated.

Section 15: Supporting Alternatives to Arrest and Incarceration and Enhancing Re-entry

Section 15 primarily discusses rehabilitation of incarcerated individuals. However, it also authorizes the creation of a Federal Interagency Alternatives and Re-Entry Committee with the goal of reducing racial, ethnic, and other disparities in the criminal justice system. The committee will examine how to safely reduce the number of unnecessary interactions between police officers and community members through “advancing alternatives to arrest and incarceration; supporting effective alternative responses to substance use disorders, mental health needs, the needs of veterans and people with disabilities, vulnerable youth, people who are victims of domestic violence, sexual assault, or trafficking, and people experiencing homelessness or living in poverty; expanding the availability of diversion and restorative justice programs consistent with public safety; and recommending effective means of addressing minor traffic and other public order infractions to avoid unnecessarily taxing law enforcement

¹⁷ Available here: <https://www.justice.gov/media/1144931/dl?inline=>

¹⁸ Office of Police Complaints 2022 Annual Report, Page 17. Available here: <https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/OPC%20FY22%20Annual%20Report%20Final.pdf>

resources”¹⁹ The committee will then publish its findings for the benefit of state, local, tribal, and territorial law enforcement agencies.

Recommendation: Unnecessary law enforcement interactions²⁰ are inefficient, a waste of public resources, reduce public trust in law enforcement, and could potentially result in dangerous situations for police officers and community members. Therefore, when the committee issues its findings, MPD should incorporate any suggested best practices into its own directives to reduce the number of unnecessary interactions between its officers and community members.

Section 19: Establishing Accreditation Standards

Section 19 directs the Attorney General to develop and implement methods for state, local, tribal, and territorial law enforcement agencies to obtain accreditation from an authorized credentialing agency and determine which federal grants will require accreditation for approval. This section also requires the Attorney General to determine the standards for certification of an organization as an authorized independent credentialing body. In addition, the accreditation process will not rely on the law enforcement agency’s self-certification. The accreditation body must conduct an independent assessment of the law enforcement agency’s compliance with the applicable standards prior to issuing the accreditation. The section goes on to state that the standards shall include the polices set forth in the following sections of the executive order:

- Section 3 (Strengthening Officer Recruitment, Hiring, Promotion, and Retention Practices)
- Section 4 (Supporting Officer Wellness)
- Section 5 (Establishing a Law Enforcement Accountability Database)
- Section 6 (Improving Use of Force Data Collection)
- Section 7 (Banning Chokeholds and Carotid Restraints)
- Section 8 (Use of Force Standards)
- Section 10 (Limiting the Use of No-Knock Warrants)

Recommendation: In a previous policy report the PCB recommended MPD seek accreditation to ensure the implementation of an effective policy and procedure system and timely, periodic review of its directives.²¹ Accreditation has several benefits for law enforcement agencies that include but are not limited to improved effectiveness, identification of opportunities for improvement, identification of training opportunities for members, increased accountability, decreased insurance premiums, reduced potential for liability, an increased sense of legitimacy from the community, and an increase in public trust that the agency is current on law enforcement best practices. Therefore, the PCB recommends that MPD seek accreditation from these certification bodies once the process is created and implemented.

¹⁹ Exec. Order No. 14074 at 32957

²⁰ The phrase “unnecessary law enforcement interactions” as used in Executive Order 14074 and this report does not include planned community engagements and outreach activities MPD conducts for the purpose of developing and enhancing its ties to the communities it serves in the District.

²¹ PCB Policy Report #17-1: Ensuring MPD Policies and Procedures are Current, November 18, 2016, available at: <https://policecomplaints.dc.gov/node/1201870>