

# Pretextual Stops of Bicyclists



Report and Recommendations of the

**Police Complaints Board**

to

**Mayor Anthony A. Williams,  
The Council of the District of Columbia, and  
Chief of Police Charles H. Ramsey**

**August 4, 2005**

**Police Complaints Board**

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## **I. INTRODUCTION AND OVERVIEW**

The Office of Police Complaints (OPC) has received a number of complaints alleging harassment in the enforcement of some District of Columbia bicycle regulations by Metropolitan Police Department (MPD) officers. These allegations of “bicycle harassment” raise concerns about perceived bias in MPD’s interactions with members of the public who ride bikes in the District. MPD’s relationship with the community is a vital component in MPD’s ability to properly and successfully perform its mission to “enforce all law and ordinances of the District of Columbia and United States in a fair and impartial manner.”<sup>1</sup> In its role as the governing body of OPC, the Police Complaints Board (PCB) has conducted a review of MPD’s enforcement of certain bicycle regulations.<sup>2</sup>

There are two provisions at issue. The first is the District’s mandatory bicycle registration program.<sup>3</sup> The requirement that District residents register their bicycles with MPD has enabled selective enforcement of the law, has created a confusing legal framework in a metropolitan area where most jurisdictions do not require bike registration, and has strained police relationships with some members of the community. The second is the District’s mandatory helmet requirement for all cyclists under sixteen years of age. This last provision, as enforced, also has the potential to create a strain on the relationship between the community and the police.

Based on its review of these provisions and other information, PCB recommends the elimination of mandatory bike registration, the collection of bike stop data, better training for officers and recruits regarding the scope of the bicycle laws, and steps to better inform bike riders of their duties under the law. PCB believes that implementation of these recommendations would assist MPD in the performance of its mission, protect the community from selective or biased enforcement of the law, and reduce the number of complaints against MPD officers.

## **II. PROVISIONS AT ISSUE**

### **A. Mandatory Registration**

Under current regulations, “[n]o person shall operate a bicycle in the District unless the bicycle has been validly registered . . . and bears a serial number, a valid registration tag, and

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<sup>1</sup> MPD General Order 201.26(I)(A)(1).

<sup>2</sup> PCB “shall, where appropriate, make recommendations to [the Mayor, the Council, and the Chief of MPD] concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers.” D.C. Official Code § 5-1104(d). PCB would like to acknowledge the assistance of the Office of Police Complaints (OPC), which is overseen by PCB, in preparing this recommendation under the guidance of the agency’s executive director, Philip K. Eure, and deputy director, Thomas E. Sharp. OPC’s 2005 summer law clerk, Thomas Moir, who is enrolled at the George Washington University Law School, and OPC’s 2004 summer law clerk, Sharif Kabir, who recently graduated from the American University Washington College of Law, performed research and provided other valuable assistance.

<sup>3</sup> D.C. Mun. Regs., Title 18, § 1202. Registration procedures are covered in § 1203. MPD General Order 303.4 covers “Inspection and Registration of Bicycles.”

valid registration plate, as provided by [the regulations.]”<sup>4</sup> Exceptions are provided for in three cases:

- (1) a bicycle “validly registered” in another jurisdiction (if that jurisdiction requires registration);<sup>5</sup>
- (2) a bicycle being operated “within fourteen (14) days of its acquisition by its owner,”<sup>6</sup> and
- (3) a bicycle being operated “within fourteen (14) days of its being brought into the District,” unless that bicycle is operated as a means of transportation to employment within the District.<sup>7</sup>

Cyclists are in violation if, even though registered, their bicycles are operated without a registration tag and metal registration plate.<sup>8</sup> Registration, which costs one dollar,<sup>9</sup> may be sought at any MPD station.

The penalty for operating an unregistered bicycle is a \$5 fine.<sup>10</sup> Unregistered bicycles may also be impounded.<sup>11</sup> An impounded bicycle “shall be returned upon the posting of an appropriate bond or collateral.”<sup>12</sup>

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<sup>4</sup> D.C. Mun. Regs., Title 18, § 1202.1.

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

<sup>6</sup> D.C. Mun. Regs., Title 18, § 1202.2

<sup>7</sup> D.C. Mun. Regs., Title 18, § 1202.3.

<sup>8</sup> D.C. Mun. Regs., Title 18, § 1202.6. PCB notes that, in practice, MPD does not register bicycles in accordance with the method provided for in the regulations. After contacting a number of station desk clerks and senior members of the Department, PCB has learned that MPD does not utilize a “tag” and “plate.” Instead, the registering officer will place a sticker on the underside of the frame, or “somewhere less visible.” Further, the officer will engrave the registration number in a similar location if engraving equipment is available. Officers suggested two reasons for the discreet location of the registration sticker and engraving. First, officers do not want to damage the appearance of the bicycle unnecessarily. Second, placing the sticker in a “less visible” location prevents thieves from noticing and removing it. Despite these explanations, PCB notes that these practices do not conform to the specific requirements in the regulations.

<sup>9</sup> D.C. Mun. Regs., Title 18, § 1203.7.

<sup>10</sup> D.C. Mun. Regs., Title 18, § 2602. The same regulation prescribes \$5 fines for “failure to register bicycle” and “renting an unregistered bicycle.” Under a new proposed rulemaking issued by the District Department of Transportation (DDOT), “civil fines for bicycle infractions that do not involve bicycle registration” will be raised to \$25. 52 D.C. Reg. 2811 (2005).

<sup>11</sup> D.C. Mun. Regs., Title 18, § 1210.1.

<sup>12</sup> D.C. Mun. Regs., Title 18, § 1210.3.

The District Council first enacted a registration regulatory scheme in 1972.<sup>13</sup> Authority to promulgate rules governing registration was bestowed upon the mayor-commissioner, who delegated it to the old Department of Motor Vehicles (DMV).<sup>14</sup> The Council then promulgated regulations requiring mandatory registration.<sup>15</sup> PCB has traced a route for the authority to promulgate rules regarding bicycle registration from the old DMV, to the old Department of Transportation (DOT), to the Department of Public Works (DPW), to the current DDOT.<sup>16</sup> Because it was the Council that required mandatory registration, however, it appears that the Council remains the District government entity with the authority to abolish mandatory registration.

## **B. Mandatory Helmets**

The D.C. Code requires that cyclists under the age of sixteen wear safety helmets.<sup>17</sup> There is no provision requiring that cyclists sixteen or older wear helmets.

## **III. RELEVANT LAW REGARDING PRETEXTUAL STOPS**

In *Whren v. United States*,<sup>18</sup> the Supreme Court examined MPD's execution of a pretextual automobile stop. A pretextual stop occurs when an officer asserts a (typically minor) violation as grounds for a stop that truly involves an ulterior agenda on the part of the officer. *Whren* challenged the practice of pretextual stops under the Fourth Amendment of the U.S. Constitution. The Court in *Whren* held that such stops are constitutional, with two caveats: the officers must still provide some articulable basis for the reasonable suspicion or probable cause that triggers the stop,<sup>19</sup> and the police enforcement of the law must still conform to the Equal Protection Clause.<sup>20</sup> The Court did not restrict its holding to automobile stops, and so *Whren* applies as well to bicycle stops; "if the officer has probable cause to stop the violator, the stop is objectively reasonable and any ulterior motivation on the officer's part is irrelevant."<sup>21</sup>

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<sup>13</sup> District of Columbia Council Regulation No. 72-13 (1972).

<sup>14</sup> District of Columbia Commissioner's Order 72-107 (May 4, 1972).

<sup>15</sup> District of Columbia Council Regulation No. 74-5 (1974).

<sup>16</sup> See D.C. Official Code, Title I, Chapter 15 (Reorganization Plans No. 2 of 1975 and No. 4 of 1983); D.C. Official Code § 50-921.05.

<sup>17</sup> D.C. Official Code § 50-1605.

<sup>18</sup> 517 U.S. 806 (1996).

<sup>19</sup> *Id.* at 810.

<sup>20</sup> *Id.* at 813; see also *United States v. Hill*, 131 F.3d 1056, 1059-60 (D.C. Cir. 1997).

<sup>21</sup> *United States v. Bell*, 86 F.3d 820, 822 (8<sup>th</sup> Cir. 1996) (applying *Whren* to a stop based on suspect's violation of statute mandating headlamps for cyclists).

#### IV. MPD'S ENFORCEMENT OF CITY'S BICYCLE REGULATIONS

##### A. Complaints Filed with OPC

In accordance with the Court's holding in *Whren*, PCB believes that MPD's execution of pretextual bicycle stops in some instances implicates issues beyond the Fourth Amendment. Several complaints investigated by OPC suggest that training deficiencies exist in MPD regarding the District's bicycle laws. Enforcement of the regulations may be based on a poor knowledge of their scope. An instructor with MPD's Institute of Police Science has indicated to PCB that the training academy spends little to no time familiarizing recruits or officers attending in-service training with the regulations.<sup>22</sup> This lack of knowledge may lead to the situation in which an officer applies "law" that does not actually exist.

In one case, an MPD sergeant issued a citation to a 36-year-old man for cycling without a helmet, identifying the violation as "Improper Equipment (Helmet)" on the Notice of Infraction. As adults are not required to wear helmets, this incident raises concerns regarding officers' knowledge of the law.<sup>23</sup>

There is little indication that members of the public are better informed about these laws than are MPD officers. There appears to be a general lack of awareness regarding the intricacies of the District's bicycle regulations, especially the registration requirements.<sup>24</sup> The D.C. Bicycle Advisory Council, charged with advising the Mayor and city government on bicycle issues, noted in 2003 that "registration procedures are not followed consistently or necessarily in compliance with the regulations. . . . Registration is not routinely or consistently implemented or enforced per the regulations."<sup>25</sup> This lack of consistency has contributed to a "lack of community education about the regulations concerning bicycle registration."<sup>26</sup> "Only a small percentage of bicycles [is] registered."<sup>27</sup> Complainants and other individuals whose unregistered bicycles have been impounded by the police typically are surprised to learn that the police have the power to do so. Since bicycles may be purchased from vendors anywhere in the world, a requirement that bike vendors in Washington, D.C., inform purchasers of the need to register would not adequately address the problem.

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<sup>22</sup> Conversation with an MPD training academy instructor, July 27, 2004.

<sup>23</sup> The fact that this particular member of MPD was a sergeant is particularly troublesome, as the more experienced and high-ranking members of MPD are expected to provide guidance to less-experienced officers.

<sup>24</sup> Through its Bicycle and Pedestrian Program, DDOT does take proactive steps to inform the cycling public about the District's bicycle regulations. OPC also engages in community outreach and would be willing to assist DDOT in disseminating information about the bicycle regulations to the public.

<sup>25</sup> D.C. Bicycle Advisory Council, *Bicycle Registration Options Paper* (April 14, 2003).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

## **B. Negative Policy Implications**

There are numerous negative policy implications stemming from MPD's enforcement of the bicycle regulations, especially the mandatory registration requirement. These detrimental consequences affect the public and MPD alike.

### ***Perception of Bias and Strained Community Relations***

Current MPD practices allow for selective enforcement and pretextual stops,<sup>28</sup> and, therefore, invite perceptions of a biased policing. While the Supreme Court held in *Whren* that a stop does not violate the Fourth Amendment simply because the officer has an ulterior motive, the Court did not find that pretextual stops are an effective, efficient, or beneficial practice. In fact, PCB believes that MPD's execution of pretextual bicycle stops impairs the Department's efficiency and effectiveness by raising the specter of racial profiling and bias.<sup>29</sup>

MPD itself has recognized the importance of its relationship with members of the community, as evidenced by its commission of an independent study of perceived bias in the department. The study emphasized that police are "more effective when they have the trust and cooperation of the residents in their community."<sup>30</sup> The study recommended that MPD "should focus on the need to be more engaged with the community in order to ensure better community cooperation, support, and understanding of police activities."<sup>31</sup> Tensions in the relationship between police and the community are "exacerbated by allegations of police misconduct such as racial profiling or other forms of bias in the delivery of police services."<sup>32</sup> In the matter at issue, tensions are aggravated due to selective enforcement of the mandatory bicycle registration regulations.

The complaints of bike riders alleging harassment that come before OPC tend to include similar facts: The complainant – often a black male – riding an unregistered bike draws the attention of the subject officer who has in some cases had prior knowledge of the complainant through past dealings.<sup>33</sup> In order to obtain justification for a frisk or full search of the

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<sup>28</sup> See, e.g., Del Quentin Wilber, *D.C. Police Sweeping The Streets for Guns*, Wash. Post, July 4, 2004, at C6 (reporting MPD's practice of executing pretextual stops – based on minor offenses – in order to search for guns).

<sup>29</sup> While this report focuses exclusively on those pretextual stops involving bicycles, PCB and OPC remain alert and sensitive to all allegations of pretextual stops and potentially biased policing.

<sup>30</sup> Police Foundation, *Final Report: Biased Policing Project 2* (2004).

<sup>31</sup> *Id.* at 115.

<sup>32</sup> *Id.* at 2.

<sup>33</sup> In one case, the complainant, a 33-year-old black male, alleged that he was stopped by an MPD officer with whom he had prior experiences. The officer confiscated the complainant's unregistered bicycle and told the complainant, "I'm gonna lock you up for something everyday 'til you stop hangin' 'round here."

complainant because of less-than-reasonably suspected illegal activity,<sup>34</sup> or due to the officer's irritation from the current contact,<sup>35</sup> the officer approaches the complainant lacking registration or who is in violation of one of the city's biking laws as justification for the encounter or as a means of retaliation for some perceived slight.<sup>36</sup> All parties involved – complainant, officers, and witnesses – know that the asserted violation is not the heart of the matter or the real basis for the stop. The question remains, however, as to what the true motive of the stop is – be it unreasonable suspicion, racial profiling, or personal animus.<sup>37</sup>

When the community observes such stops, its faith in the even-handed enforcement of the law by the police is diminished. MPD General Order 304.15 states that “[p]roviding citizens with an explanation for why they were stopped fosters better relations with the community and reduces the perception of bias on the part of the police.”<sup>38</sup> When that explanation is questionable or less than forthcoming, it does not promote better relations. In the case involving the 30-year-old black male complainant who was stopped on his bicycle, the officer stopped him specifically because, the office asserted, the man's bicycle appeared to be unregistered. But since the registration sticker and engraving are located on the underside of the frame, the officer's explanation for stopping the complainant does not appear plausible on its face.

Pretextual stops and less-than-open explanations have a detrimental effect on the reputation of the police in the community. The public becomes more likely to fear and withdraw from an MPD presence, rather than welcome officers into the community and establish a beneficial dialogue. This withdrawal, in turn, creates wide-reaching negative effects.<sup>39</sup> Use of

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<sup>34</sup> In another case, the complainant, a black male, stated that his brother was being issued a subpoena by several MPD officers, and he told his brother he did not have to accept the subpoena. The subject officer then asked the complainant whether his bicycle was registered. The complainant replied that it was not. The complainant alleged that the officer then proceeded to search the complainant.

<sup>35</sup> In a third case, the complainant, a 47-year-old black male, alleged that he was stopped by MPD officers because they thought he matched the description of a suspected burglar. The complainant refused to provide his address or telephone number to the officers, who subsequently impounded his unregistered bicycle.

<sup>36</sup> In a fourth case, the complainant, a 28-year-old black male, pedaled past MPD officers who had arrested his brother and gave them a “hand gesture.” The officers told the complainant to stop; he did not. When the officers finally caught up with him, they ran a warrant check while inspecting his bike for evidence of registration. The warrant check came back negative, but the officers impounded the complainant's bicycle for lack of registration.

<sup>37</sup> Such stops are not limited to young black males; the registration requirement has also been used as a retaliatory and pretextual search tool against other unpopular groups, such as protestors. In a fifth case, the white female complainant, a member of a group of protesting bicyclists, alleged that MPD officers stopped the group to inquire about a missing embassy flag. An officer requested permission to search the riders' bags, and, when they declined, one rider's bicycle was impounded for lack of registration.

<sup>38</sup> MPD General Order 304.15(IV)(B)(4).

<sup>39</sup> See, e.g., David Harris, *The Stories, the Statistics, and the Law: Why “Driving While Black” Matters*, 84 Minn. L. Rev. 265, 268-69 (1999):

Pretextual traffic stops aggravate years of accumulated feelings of injustice, resulting in deepening distrust and cynicism by African-Americans about police and the entire criminal justice system. But the problem goes deeper. If upstanding citizens are treated like criminals by the police, they



the bicycle regulations as pretext for a stop creates skepticism and disbelief in the community MPD is attempting to serve.

At least one national bicycle advocacy group is opposed to mandatory registration. The League of American Bicyclists, headquartered in the District, believes that “[m]andatory bicycle registration should be imposed only where the benefits of and/or necessity for such ordinances are demonstrable and where the penalties for violation are minimal.”<sup>40</sup> Mandatory registration in the District is not a “necessity,” because other, less burdensome options exist. Further, as MPD is authorized to impound any unregistered bicycle,<sup>41</sup> the penalties for violation here cannot be considered “minimal.”

### ***Equal Protection***

In *Whren*, the Court held that the Equal Protection Clause of the Fourteenth Amendment is the vehicle for challenging race-based police practices. Racial profiling, however, is exceedingly difficult to prove for any criminal defendant because of a high threshold of proof and diminished discovery rights. Absent an admission of bias on the part of the subject officer or other direct evidence, it is also very difficult for OPC to prove complaints involving possible race-based policing. PCB believes that MPD’s practices, if unchecked, may creep over the line drawn by the Fourteenth Amendment. Corrective action taken now will help to ward off potential Equal Protection issues and discrimination claims against MPD in the future.

### ***Burden on Resources***

MPD is a busy organization. With approximately 3,800 sworn members serving a city of 575,000 residents, the Department’s time, personnel, and funding must be used wisely. Taking time away from other responsibilities to track bicycle registration is – at best – a questionable use of those limited resources, especially as other options are readily available. Making registration voluntary and shifting paperwork to a private firm would conserve valuable MPD resources and allow the Department to focus on its mission of providing fair and effective policing for the residents of the District.

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will not trust those same officers as investigators of crimes or as witnesses in court. Fewer people will trust the police enough to tell them what they know about criminals in their neighborhoods, and some may not vote to convict the guilty in court when they are jurors.

While focused specifically on the case of African-Americans subjected to pretextual traffic stops, the logic carries over to any group habitually subjected any sort of pretextual police action.

<sup>40</sup> League of American Bicyclists, *League Position on Bicycle Registration*, at <http://www.bikeleague.org/members/bicycleregistration.htm>.

<sup>41</sup> D.C. Mun. Regs., Title 18, § 1210.1.

## *Convoluting Law*

The bicycle laws in the District confuse and frustrate many police officers and members of the public. DDOT has proposed a number of laudable reforms affecting the regulations,<sup>42</sup> but mandatory bicycle registration remains on the books. Mandatory registration in particular may provide a source of frustration for residents of the metropolitan area. For example, bicycles may be registered in other cities or counties, when required by the applicable law of such jurisdiction. However, none of the District's neighbors (except Montgomery County, MD), require such registration. Instead, Prince George's County, MD, Arlington County, VA, Fairfax County, VA, and the City of Alexandria, VA, all have voluntary registration programs.<sup>43</sup> Given the interconnected nature of the metropolitan area, the District's anomalous registration regulations seem impractical. Instead of protecting citizens, the law may be confusing them.

As noted above, almost all of the jurisdictions bordering the District use a voluntary registration system. The D.C. Bicycle Advisory Council has identified a number of benefits from such a system:

- DDOT supports the use of National Bike Registry [a national bicycle registration database licensed by the National Crime Prevention Council] for this purpose.
- Cost is affordable to the majority of bicycle owners....
- Eliminates burden on [MPD] for implementing bicycle registration.
- Private sector vendors (e.g., bicycle shops) could sell the registration kits for profit.
- Gives bicycle owners more options for registration. Bicycles can be registered online or by mail.
- Does not require a proof of purchase [unlike current District regulations<sup>44</sup>].
- National Bike Registry allows bicycles that have been stolen to be registered for up to the previous six months for only \$0.99. . . .<sup>45</sup>

## **V. RECOMMENDATIONS**

Based on the information gathered during its review of this issue, PCB makes the following recommendations to address the issues it has identified regarding stops of bike riders made by MPD officers:

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<sup>42</sup> See Notice of Proposed Rulemaking, 52 D.C. Reg. 2811 (2005) (proposing a number of reforms such as clarifying light and reflector requirements).

<sup>43</sup> Montgomery County, MD: Montgomery County Code § 7-4; Prince George's County, MD: telephone call to police department, May 27, 2005; Arlington County, VA: <http://www.co.arlington.va.us/Departments/EnvironmentalServices/dot/planning/bike/EnvironmentalServicesBike6.aspx>; Fairfax County, VA: telephone call to police department, May 27, 2005; City of Arlington, VA: telephone call to police department, May 27, 2005; Virginia generally: Va. Code Ann. § 46.2-908 (Michie 2004).

<sup>44</sup> See D.C. Mun. Regs., Title 18, § 1203.3

<sup>45</sup> D.C. Bicycle Advisory Council, *Bicycle Registration Options Paper* (April 14, 2003).

## **A. Eliminate Mandatory Registration**

PCB recommends that the District Council replace mandatory, police-based registration with a voluntary, national registration system.<sup>46</sup> PCB believes that abolition of mandatory registration is the best solution to the problems resulting from mandatory registration. Some MPD officers use the registration regulations as a pretext for stopping citizens they otherwise could not stop. That ulterior motive invites criticism and suspicion from the public, especially when it is interpreted as race-based harassment by individuals who are offered no more convincing explanation. The complaints that have come to the attention of OPC are a likely indicator of a more widespread problem. For the sake of MPD's relationship with the community, and for the sake of uniform application of the law, PCB strongly recommends the elimination of mandatory bicycle registration.<sup>47</sup>

## **B. Collect Data on Bicycle Stops**

PCB recommends that MPD collect and analyze data on all stops involving people on bikes. As part of its biased policing project, MPD recently retained a consultant to collect and analyze data regarding traffic and pedestrian stops made by MPD officers. The data collection effort should be extended to include stops of bicyclists to allow MPD, PCB, and other concerned agencies and organizations to monitor this potential source for accusations of biased policing.

## **C. Improve Training**

Whether registration becomes voluntary or remains mandatory, it is evident that many MPD officers and recruits require improved training regarding the bicycle regulations and statutes. PCB is not advocating an in-depth curriculum, but simply an introduction to the scope of the law for both recruits and officers attending in-service training. Training at roll-call also could familiarize officers with the scope of the law.

MPD should also continue its instruction regarding the consequences and undesirability of biased policing. The study on biased policing commissioned by MPD highlighted the importance of the "trust and cooperation" of the community, but the perception of bias remains. MPD's response to the biased policing study rightfully states that "[i]t is important that our Department better understands the sources of these feelings and works harder to address these negative perceptions."<sup>48</sup> MPD should persist in its work to eliminate the perception of bias by stepping up its efforts to educate its officers and recruits about the detrimental effects of discriminatory policing or the perception of discriminatory policing.

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<sup>46</sup> If an agency such as DDOT is determined to have the authority to abolish mandatory registration, PCB's recommendation may be addressed to that agency.

<sup>47</sup> Repeal of the registration regulation would also necessitate the withdrawal of MPD General Order 303.4 (covering "Inspection and Registration of Bicycles").

<sup>48</sup> Chief Charles H. Ramsey, *Metropolitan Police Department Response to the Final Report and Recommendations of the Biased Policing Project*, at <http://mpdc.dc.gov/mpdc/cwp/view,a,1246,q,555635.asp>.

#### **D. Inform the Public**

In any jurisdiction, the public should be made aware of the laws and regulations that affect their lives. If mandatory bike registration is not eliminated, PCB further recommends that pamphlets containing the whole of the regulations should be disseminated at community events. DDOT already engages in this sort of community outreach through its bicycle program, but MPD, as enforcer of the regulations, should also take steps to work with the community to raise awareness of the law. A positive example of such work is MPD's cooperative effort with DDOT to provide helmets to bicyclists under sixteen years of age. OPC can further aid in the distribution of information and material through its community outreach programs to schools and communities.

#### **VI. CONCLUSION**

PCB believes that the current state of some bike laws in the District is ineffective. MPD's sporadic enforcement of the District's bike registration regulations detracts from MPD's ability to form constructive and mutually respectful relationships with the community. Therefore, PCB recommends the foregoing steps to address these issues. By enacting these reforms, the Government of the District of Columbia can ensure fairer, more effective, and more efficient police service for residents and visitors alike.