

Testimony of

The Hon. Kathy Patterson

D.C. Auditor

before the

Council of the District of Columbia

Committee on the Judiciary and Public Safety

Hearing on

B24-0356 the “Strengthening Oversight and Accountability of Police Amendment
Act of 2021 *and other legislation*”

October 21, 2021

Virtual Hearing via Zoom

Chairperson Allen, Councilmembers, and staff, thank you for this opportunity to testify on legislation before the Committee including Bill 24-0356, the “Strengthening Oversight and Accountability of Police Amendment Act of 2021” introduced by Chairman Phil Mendelson.

Before I comment specifically on the Deputy Auditor for Public Safety proposed in Bill 24-356 I would like to make a few general comments on the task before you. While testifying today as the D.C. Auditor, it is also with the perspective of having served three terms on the D.C. Council and four years as chair of the Committee on the Judiciary.

As I have shared in previous testimony, a characteristic of statutory language that creates sound, effective public policy is that it is simple, clear and unambiguous. Language written for the D.C. Code should create bright lines. In the case of Bill 24-356, it will be important that lines be drawn clearly between the roles and responsibilities of the two principal accountability agencies covered by the legislation, the Office of the D.C. Auditor (ODCA) and the Office of Police Complaints, to be renamed the Office of Police Accountability (OPA).

One such bright line would be to be clear – *if this is your view and your intention* – that the Office of Police Accountability looks forward and the Office of the D.C. Auditor and its new Deputy Auditor for Public Safety look backward; that OPA has a role in reviewing Metropolitan Police Department (MPD) policies before the fact; that ODCA audits what has already taken place, after the fact. Another bright line with regard to the two agencies would be a focus for OPA on actions of individual members of the MPD, as is the case today, and that ODCA restrict its work to policies and practices but not the actions of individuals separate from their implementation of policies and practices.

As introduced, I don’t believe the legislation is as clear as it could and should be on the distinctive roles and responsibilities of the agencies. I urge the Committee as you consider this important legislation to bear in mind the need for clarity to avoid duplication or omissions.

A second general point is this: Please don’t include requirements that cannot be measured or reports that may not be used because they either are never produced or were submitted but not reviewed due to the press of other business. In an attached red-line version of the legislation I recommend deleting requirements that are not precise enough to know if and when they have been accomplished. For example, “improving public disclosure procedures” and “providing for timely information about the status of reviews” are clearly laudable goals, but I recommend not including such descriptions unless further definition is added including whether it can be known if we have arrived at the desired destination.

With regard to including reporting requirements in legislation, over the last 46 years the Council has added statutory language requiring at least (alt: a total of) 574 reports to be submitted to the Council to assist with legislative oversight of policies and programs. According to the “Statutorily Required Reports to be Delivered to the Council” (source: https://f4a4b25a-57d2-403e-b460-1159c2c1f189.filesusr.com/ugd/087b9e_64c9f228c85f4970a2f19d9b35105ae3.pdf) issued by the Office of the Secretary as of August 31, 2020, of the 574 reports required in the D.C. Code, only 103 were reported as having been submitted in Council Period 23.

One example: D.C. Code § 5–1032 required the Metropolitan Police Department (MPD) to compile and deliver a report on police misconduct, discipline, and equal employment grievances to the Mayor and Council each year with an effective date of January 2006. ODCA’s team working on a current project on police terminations for misconduct learned that this report had not been submitted in the last few years. As a result of discussion following our request for the report, the current MPD leadership submitted a report covering calendar years 2016 to 2020 on September 16, 2021. The requirement also applied to the Department of Fire and Emergency Medical Services (FEMS) and that agency has submitted that report throughout the Bowser Administration. (It’s unclear how this requirement will be affected by B24-0356 which would make disciplinary records public information and require MPD to create a publicly accessible database for disciplinary records of officers.)

A final and related point is one on which I quote the late U.S. Senator Sam Ervin from his introduction to the 1974 report of the Senate Watergate Committee. “Law is not self-executing,” he wrote. That admonition was just recently quoted in U.S. Representative Adam Schiff’s new memoir. Whatever new policy this Committee and this Council adopts and makes a part of the D.C. Code will NOT be self-executing. It will become the responsibility of the Council and this Committee to use its oversight authority to ensure that any new accountability measures are implemented with fidelity, are effective, and meet their intended purpose. (And if you would like examples of instances in which this has not always been the case I am happy to provide examples.)

Deputy Auditor for Public Safety

The Police Reform Commission proposed, and Chairman Mendelson incorporated in Bill 24-0356, a new Deputy Auditor for Public Safety in the Office of the D.C. Auditor. I am grateful to Commission Co-Chairs Robert Bobb and Christy Lopez for sharing this proposal with me prior to issuing the Commission’s report and soliciting my views on the proposal. I indicated to the Commission that I understood there were alternatives to placing this position within ODCA and that they included creating an Inspector General within the MPD, as has been done in New York City, or creating a wholly independent entity, or placing the function within the Office of Police Complaints. The Committee may wish to consider all such options. I told the co-chairs, and repeat here, that I would be ready and willing to take on the responsibility of implementing such a proposal and would do so to the best of my ability.

Legislative Provisions

With regard to the legislation itself, I recommend deleting the word “powers” from the long title of the legislation. As many of you know the Office of the D.C. Auditor has wide authority today -- authority vested in the office in the Home Rule Act. Because the Home Rule Act provisions are so robust, there are no additional powers that the Deputy Auditor for Public Safety would need; that is, the position would derive its ample authority from the power of the office as it exists today.

The legislation proposes a search committee made up of specific individuals including the leaders of the major public safety agencies and the Chairman of this Committee. It would certainly be my intention to seek the views of individuals in each named position on both drafting a position description and recruiting to fill that position. But I don't think it is appropriate to place a new responsibility in the hands of the D.C. Auditor or any other current or created government official and then prescribe in statute how the D.C. Auditor or other person named goes about hiring individuals to fulfill the responsibility. I recommend the legislative language related to a search committee be included in the Committee report as a recommendation but not required as a provision in the D.C. Code.

With one exception I concur with the qualifications set out in the legislation. I do not believe the Deputy Auditor must be an attorney. Given my experience leading the Council's Judiciary Committee and similarly leading work on police matters in my current position I would be qualified for this position though I am not now nor have I ever been an attorney. I am simply the handiest example; there are other individuals who could perform well in this role without being attorneys including some who served on the Police Reform Commission.

I also recommend deleting the language that limits the removal of the Deputy Auditor other than for cause, and believe removal is an issue best left to creation of a position description including which government service the individual is a part of.

I recommend adopting the language from the Police Reform Commission when enumerating the various areas that the Deputy Auditor would be expected to delve into and offer that language in the attached red-line text.

I mentioned at the outset the importance of being clear on the respective roles of ODCA and the Office of Police Complaints (OPC). The legislation would require the Deputy Auditor to basically review the work of the OPC. ODCA has that authority today; we could review the work of the OPC. But I would advise against mandating such reviews. Today the Office of the D.C. Auditor and the OPC, and ODCA and the Office of the Inspector General, have good working relationships. ODCA and the OIG share work plans; we strive to avoid duplication of efforts. Creating a situation in which one accountability organization is required to oversee the work of another could impinge on a collaborative working relationship and even limit the effectiveness of one or the other agency. To repeat: ODCA today can review the OPC's work, but we have not done so and I would hope we do not do so, but we *could* do so under current authorities if exigencies seemed to require it. I recommend leaving the issue alone in this legislation.

I also recommend deleting additional sections as unnecessary and/or as language more appropriate to a Committee report to provide the Council's perspective but short of a statutory requirement. It is not necessary to restate the office's authority with regard to MPD, though it may be useful to be very specific about the Office's authority with regard to the D.C. Housing Authority and private sector security agencies that have received licenses from the D.C. government.

I would like to touch on one provision that is not in the legislation but was recommended by the Police Reform Commission and that is subpoena authority. Because the Office of the D.C.

Auditor has subpoena authority and has had that authority since the office's creation in the 1970s, it is not necessary for new legislation to restate an existing authority. And if the Council were to grant subpoena authority to the Deputy Auditor it could create confusion as to whether that authority was separate from the authority that resides in the hands of the D.C. Auditor which would violate the "bright line" of clarity I recommended earlier.

Finally, Mr. Chairperson, I would like to address the resources I believe are necessary for a Deputy Auditor for Public Safety to fulfill the broad responsibilities envisioned by the Police Reform Commission and in the legislation before you. The Commission itself called for the unit's budget to "be sufficient for the deputy auditor for public safety to perform all of its responsibilities." In response to a question during the FY22 budget cycle from Chairman Mendelson, I provided an outline of the budget I believe is necessary to fulfill those responsibilities. It was for a total annual budget of \$2 million and nine FTEs with salary ranging from \$80,000 to \$230,000. I also explained that I would recommend less than a full year budget for FY22 since this legislation had not been considered much less enacted, and that creating the position and hiring someone as deputy auditor would likely wait until the second quarter of the year or later.

Regrettably, while the Committee of the Whole and the full Council approved an additional \$1.2 million for the ODCA budget as a partial-year funding for the new unit, the Office of Budget and Planning apparently considered that total to be a full year's funding and has not provided sufficient funds for successive fiscal years. I sought to receive the 5-year-financial plan with the budget for the outyears (which is required by the D.C. Code but has not been made available for many years) in order to know what the shortfall would be. I mention this because while there are sufficient funds to begin the operations of a Deputy Auditor for Public Safety unit within ODCA, the matter will need revisiting in the FY23 budget since it would not be responsible on my part to hire in FY22 individuals whose salaries would not be supported in FY23.

In addition to the red-line version of the bill appended to my written testimony, I also include a summary of the recommendations included in the second report The Bromwich Group completed for ODCA on officer-involved fatalities between 2018 and 2020. The third and final report will review the internal investigation of the death of Karon Hylton-Brown, which will follow action on the criminal case brought by the U.S. Attorney's Office. MPD's responses to the two reports established target implementation dates for the recommendations—the end of 2021 for the recommendations contained in the March 23 report, and September and October 2021 for recommendations in the May 25 report. In the attached response MPD gives a target date of September 2021 to define the purpose and functions of Crime Suppression Teams and to develop departmental policy on foot pursuits. Law is not self-executing, nor are auditor recommendations! I encourage the Committee to follow up on the recommendations made in the reporters earlier this year in your ongoing oversight of the Metropolitan Police Department.

Thank you for the opportunity to provide these views, and I am happy to answer any questions.

Chairman Phil Mendelson

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Auditor Subpoena and Oath Authority Act of 2004 to create the position of Deputy Auditor for Public Safety within the Office of the District of Columbia Auditor; to establish minimum qualifications for the Deputy Auditor; to prescribe the duties ~~and~~ responsibilities, ~~and powers~~ of the Deputy Auditor; to amend the Office of Citizen Complaint Review Establishment Act of 1998 to rename the Police Complaints Board the Police Accountability Commission; to change the membership of the Commission; to expand the authority of the Commission to review policies, procedures, and trainings, and to provide input on the job description and qualifications of a Chief of Police; to rename the Office of Police Complaints to the Office of Police Accountability; to expand the authority Office’s Executive Director to encompass complaints against special police, to receive anonymous complaints, and to continue administrative investigations of officers while the U.S. Attorney’s Office determines whether to pursue prosecution against an officer; to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to provide stipends to members of the Police Accountability Commission; to amend the Freedom of Information Act of 1976 so that disciplinary records of officers with MPD and the D.C. Housing Authority Police Department can no longer be withheld from the public; to require the Chief of Police to submit department policies, procedures, and updates to training to the Police Accountability Commission for comment; and to require MPD to create a publicly accessible database for disciplinary records of officers.

Commented [PK(1): Powers as drafted here already reside with the Office of the DC Auditor

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Strengthening Oversight and Accountability of Police Amendment Act of 2021”.

39 Sec. 2. The District of Columbia Auditor Subpoena and Oath Authority Act of 2004,
40 effective April 22, 2004 (D.C. Law 15-146; D.C. Official Code § 1301.171 et seq.) is amended
41 as follows:

42 (a) A new section (5) is added to read as follows:

43 “Sec. 5. Establishment and Qualifications of a Deputy Auditor for Public Safety.

44 “(a) There is established within the Office of the District of Columbia Auditor a Deputy
45 Auditor for Public Safety.

46 “(b) The Deputy Auditor for Public Safety shall be appointed by the Auditor. ~~The~~
47 ~~Auditor shall create a search committee composed of relevant stakeholders, including the Chair~~
48 ~~of the Public Safety Committee of the Council, the Chief of Police, the Executive Director of the~~
49 ~~Office of Police Accountability, and the Director of the Department of Corrections. The Auditor~~
50 ~~shall consider the recommendations of the search committee in making his or her selection.~~

51 “(c) In addition to other qualifications the Auditor deems necessary, the Deputy Auditor
52 for Public Safety shall:

53 “(1) ~~Be an attorney with~~ Have substantial experience in criminal, civil rights,
54 and/or labor law, or corporate and/or governmental investigations, or ~~an individual with at least 5~~
55 ~~years of~~ experience in law enforcement and/or corrections oversight; and

56 “(2) Have knowledge of law enforcement and/or corrections policies and
57 practices, particularly regarding internal investigations for misconduct and use of force.

58 ~~“(d) The Deputy Auditor for Public Safety may only be removed by the Auditor for~~
59 ~~cause.”.~~

60 (b) A new section 6 is added to read as follows:

61 “Sec. 6. Duties and Responsibilities of the Deputy Auditor for Public Safety.

Commented [PK(2)]: Suggestions for a search committee could be included as committee recommendation in the committee report.

62 “(a) The Deputy Auditor for Public Safety shall, with regard to the Metropolitan Police
63 Department, Housing Authority Police Department, District-licensed security companies (special
64 police) and Department of Corrections,

65 (1) review, analyze and make findings regarding ~~have the authority and responsibility to~~
66 ~~—————“(1) system-wide patterns and practices including but not limited to serious uses~~

67 of force; searches and seizures; use and execution of search warrants; hiring, training and
68 promotions; internal investigations and ~~discipline.~~ Review the handling of serious of use of foree
69 incidents as defined in MPD General order 901-07 or any subsequent orders, serious property or
70 vehicle damage, first amendment demonstrations, or other issues by officers of the Metropolitan
71 Police Department, the D.C. Housing Authority Police Department, or a District-licensed
72 security company. This may include auditing, monitoring, or other review of administrative
73 investigations to assess the quality, thoroughness, and integrity of the investigations, specific
74 findings of investigations, and after-action reports;

75 “(2) Conduct ~~semi-annual/periodic~~ reviews of Office of Police Accountability’s
76 handling of misconduct complaints and cases to assess and certify the timeliness, quality and
77 integrity of those investigations and ~~findings;~~

78 “(3) ~~Review, analyze, and make findings and recommendations on any policy,~~
79 ~~practice, or program within the Metropolitan Police Department, the District of Columbia~~
80 ~~Housing Authority Police Department, the Department of Corrections, or a District-licensed~~
81 ~~security company;~~

82 “(24) Monitor the implementation of ~~any~~ findings or recommendations ~~made by~~
83 ~~the Office of the Auditor, the Executive Director of the Office of Police Accountability or the~~
84 ~~Police Accountability Commission;~~ and

Commented [PK(3): ODCA has significant authority today per provisions of the Home Rule Charter

Commented [PK(4): Making language more consistent with recommendations of the Police Reform Commission

Commented [PK(5): Recommending investing the Deputy Auditor with discretion on timing and frequency

Commented [PK(6): While ODCA already has the authority to conduct such reviews, recommend thorough discussion on the kind of relationship the legislation fosters between ODCA and the OPC. Generally speaking oversight/accountability bodies do not evaluate one another and that could be seen as more appropriately the role of the elected DC Council, i.e. to serve as the overseer of the oversight bodies.

Commented [PK(7): This is duplicative of language above

Commented [PK(8): The District’s Office of Risk Management has the statutory responsibility of monitoring the implementation of recommendations made by ODCA and OIG.

85 ~~“(5) Collaborate with the Police Accountability Commission, Office of Police~~
86 ~~Accountability, and the Metropolitan Police Department in improving system transparency,~~
87 ~~including improving public disclosure procedures or mechanisms of the Metropolitan Police~~
88 ~~Department, and providing for timely information about the status of reviews, audits, or~~
89 ~~investigations.~~

90 ~~“(d) The Deputy Auditor for Public Safety shall notify an agency of any upcoming~~
91 ~~reviews and analyses under subsection (a) of this section.~~

Commented [PK(9): ODCA already does this as a standard practice

92 ~~“(e) The Deputy Auditor for Public Safety shall Ssolicit comments from the District of~~
93 ~~Columbia Police Accountability Commission for reviews and analyses related to the~~
94 ~~Metropolitan Police Department or the District of Columbia Housing Authority Police~~
95 ~~Department under subsection (a) of this section.~~

96 ~~“(f) Analyses, findings, recommendations, and any relevant supplemental materials shall~~
97 ~~be delivered to the Mayor and Council and made publicly available after the receipt of final~~
98 ~~comments from the agency.~~

Commented [PK(10): This is already required by DC Code

99 ~~“(g) The Deputy Auditor for Public Safety shall conduct regular outreach to District~~
100 ~~residents to share information with the public about its mission, policies, and operations, and to~~
101 ~~provide updates reviews or investigations where applicable.~~

Commented [PK(11): This would be better as Committee report language and is a responsibility that the DC Auditor already undertakes; there may be times/opportunities for broader public dialogue than the issues reserved to the DAPC.

102 ~~“(h) Beginning on December 31, 2023 and by December 31 every year thereafter, the~~
103 ~~D.C. Auditor Deputy Auditor for Public Safety shall deliver a report to the Mayor and the~~
104 ~~Council that includes the activities of the Deputy Auditor for Public Safety his or her activities in~~
105 ~~the prior year.”.~~

106 ~~(c) A new section 7 is added to read as follows:~~

107 ~~“Sec. 7. Powers of the Deputy Auditor for Public Safety.~~

108 “(a)(1) In addition to powers already enumerated in D.C. Code Section 1-204.55(c) the
109 D.C. Auditor and by delegation the The Deputy Auditor for Public Safety shall have access, as is
110 necessary to conduct his or her work, to all books, accounts, records, reports, findings and all
111 other papers, things, or property belonging to or in use by the Metropolitan Police Department,
112 the District of Columbia Housing Authority Police Department and, the Department of
113 Corrections, or any District-licensed security company.

114 “(2) The Deputy Auditor for Public Safety shall maintain confidentiality of
115 persons named in any documents transferred from the Metropolitan Police Department, the
116 District of Columbia Housing Authority Police Department, the Department of Corrections, or a
117 District licensed security company pursuant to this subsection to the extent required by District
118 law.

119 “(b)(1) Upon receipt of any findings and recommendations made by the Deputy Auditor
120 for Public Safety, the Metropolitan Police Department, the District of Columbia Housing
121 Authority Police Department, or the Department of Corrections shall have 30 days to provide a
122 written response that includes a description of any corrective action the agency intends to make,
123 and the basis for rejecting any finding or recommendation in whole or in part.

124 “(2) The agency may request an extension in writing to Deputy Auditor for Public
125 Safety of up to 15 additional days as deemed necessary.”

126 Sec. 3. The Office of Citizen Complaint Review Establishment Act of 1998, effective
127 March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1101 *et seq.*), is amended as follows:

128 (a) Section 4 (D.C. Official Code § 5-1103) is amended as follows:

129 (1) Paragraph (1) is struck.

130 (2) Paragraph (2) is designated as paragraph (1).

Commented [PK(12)]: This section should amend existing authorities of the D.C. Auditor with language that says specifically, “including the District of Columbia Housing Authority and any District-licensed security company.” As written this could imply that ODCA does not currently have these authorities, so it’s important to specify where there is added, or clarified, authority with those two recommended references added to current DC Code provisions.

Commented [PK(13)]: ODCA already complies with all DC and federal laws that would be encompassed in this language

Commented [PK(14)]: These are audit procedures already largely in place in ODCA and do not need to be reflected in DC Code. Could be included as report language, indicating the Committee’s support for standard auditing procedures.

131 (3) A new paragraph (2) is added to read as follows:
132 (2) “Commission” means the District of Columbia Police Accountability
133 Commission.
134 (4) Paragraph (4) is amended by striking the phrase “Complaints.” and replacing
135 it with the phrase “Accountability.”
136 (b) The title of Section 5 (D.C. Official Code § 5–1104) is amended by striking the
137 phrase “Police Complaints Board” and replacing it with the phrase “Police Accountability
138 Commission.”
139 (c) Section 5 (D.C. Official Code § 5–1104) is amended to read as follows:
140 “(a) There is established a District of Columbia Police Accountability
141 Commission (“Commission”). The Commission shall be composed of nine voting members and
142 one ex-officio member. The Commission shall include:
143 “(1) At least three members between the ages 15 and 24 residing in
144 neighborhoods with higher-than-average levels of police stops and arrests;
145 “(3) Two persons from immigrant communities, or representatives of
146 service providers or advocacy organizations who serve immigrant persons;
147 “(4) Two persons from the LGBTQIA community, or representatives of
148 service providers or advocacy organizations who serve LGBTQIA people;
149 “(5) Two persons with disabilities, or representatives of service providers
150 or advocacy organizations who serve persons with disabilities in District; and
151 “(7) A member of the Metropolitan Police Department selected by the
152 Chief serving as an ex-officio member.
153 “(b) All members of the Commission shall be residents of the District.

154 “(c) Members of the Commission shall be appointed by the Mayor, subject to
155 confirmation by the Council. The Mayor shall submit a nomination to the Council for a 90-day
156 period of review, excluding days of Council recess. If the Council does not approve the
157 nomination by resolution within this 90-day review period, the nomination shall be deemed
158 disapproved.

159 “(d) Commission members shall serve a term of 3 years from the date of
160 appointment or until a successor has been appointed. A Commissioner may be reappointed and
161 serve two consecutive terms. The Mayor shall designate the Chairperson of the Commission and
162 may remove a member of the Commission from office for cause. A person appointed to the
163 Commission to fill a vacancy occurring prior to the expiration of a term shall serve for the
164 remainder of the term or until a successor has been appointed.

165 “(e) Commission members shall be entitled to a stipend pursuant to D.C. Official
166 Code § 1-611.08(c-2)(6).

167 “(f) The Commission shall:

168 “(1) Conduct periodic reviews of the citizen complaint review process,
169 and make recommendations, where appropriate, to the Mayor, the Council, the Chief of the
170 Metropolitan Police Department, and the Director of the District of Columbia Housing
171 Authority;

172 “(2) Review, solicit community feedback, and provide comments on non-
173 administrative Metropolitan Police Department policies, procedures, and updates to training,
174 prior to those policies, procedures, and trainings being finalized and binding upon employees of
175 the MPD. The Commission shall have 45 days from the date the Chief of Police submits the
176 policy, procedure, or updated training curriculum to provide comments;

177 “(3) Provide comments and input on the job description and qualifications
178 of a Chief of Police of the Metropolitan Police Department;

179 “(4) Share information with the Deputy Auditor for Public Safety as is
180 deemed necessary or required by law or formal agreements;

181 “(5) Collaborate with the Deputy Auditor for Public Safety and the
182 Metropolitan Police Department in improving system transparency, including improving public
183 disclosure procedures or mechanisms of the Metropolitan Police Department, and providing for
184 timely information about the status of investigations and their outcomes.

185 “(g) The Executive Director, acting on behalf of the Commission, shall have
186 unfettered, timely and complete access to information and supporting documentation from the
187 MPD, HAPD, and any District-licensed security company to which the subject special officer,
188 specifically related to the Commission’s duties.

189 “(h) Within 60 days of the end of each fiscal year, the Commission shall transmit
190 to the entities named in subsection (f)(1) of this section an annual report of the operations of the
191 Commission and the Office of Police Accountability.

192 “(i) The Commission is authorized to apply for and receive grants to fund its
193 program activities in accordance with laws and regulations relating to grant management.”.

194 (d) The title of Section 6 (D.C. Official Code § 5–1105) is amended by striking the
195 phrase “Complaints” and replacing it with the phrase “Accountability.”.

196 (e) Section 6 (D.C. Official Code § 5–1105) is amended as follows:

197 (1) Subsection (a) is amended by striking the phrase “Complaints” and replacing
198 it with the phrase “Accountability.”.

199 (2) Subsection (b) is amended striking the phrase “Board” and replacing it with
200 phrase “Commission” wherever it is found.

201 (f) Section 7(c) (D.C. Official Code § 5–1106(c)) is amended by striking the phrase
202 “Board” and inserting phrase “Commission” wherever it is found.

203 (g) Section 7(d) (D.C. Official Code § 5–1106(d)) is amended by striking the phrase
204 “Board” and inserting phrase “Commission” wherever it is found.

205 (h) Section 8 (D.C. Official Code § 5–1107) is amended to read as follows:

206 “(a)(1) The MPD and the Office shall have the authority to receive or audit a
207 citizen complaint against a member or members of the MPD for alleged abuse or misconduct.

208 “(2) If MPD receives a citizen complaint under subsection (a) of this
209 section, the MPD shall transmit the citizen complaint to the Office within 3 business days after
210 receipt.

211 “(b) The Office shall have the authority to receive or audit a citizen complaint
212 against a member or members of the District of Columbia Housing Authority Police Department
213 (HAPD) or special police licensed by the District.

214 “(c)(1) The Office shall have the sole authority to dismiss, conciliate, mediate,
215 adjudicate, or refer for further action to the MPD or the HAPD a citizen complaint received
216 under subsection (a) or (b) of this section.

217 “(2) If during the investigation of a civilian complaint, the Office finds
218 evidence of abuse or misconduct not included in the original complaint, the Office may
219 include these allegations in the original complaint.

220 “(c) In addition to investigating authority granted under subsections (a) and (b) of
221 this section, the Office shall have the authority to:

222 “(1) Conduct administrative investigations and make findings on all
223 serious use of force incidents, as defined in MPD General order 901-07 or any subsequent
224 orders, by MPD, HAPD officers or special police licensed by the District; and

225 “(2) Conduct administrative investigations and make findings on all MPD
226 or HAPD in-custody deaths.

227 “(d) Any individual having personal knowledge of alleged police misconduct may
228 file a complaint with the Office on behalf of a victim.

229 “(e) To be timely, a complaint must be received by the Office within 90 days from
230 the date of the incident that is the subject of the complaint. The Executive Director may extend
231 the deadline for good cause.

232 “(f) Each complaint shall be reduced to writing. Complaints may be submitted
233 anonymously.

234 “(g) The Executive Director shall screen each complaint and may request
235 additional information from the complainant. Within 7 working days of the receipt of the
236 complaint, or within 7 working days of the receipt of additional information requested from the
237 complainant, the Executive Director shall take one of the following actions:

238 “(1) Dismiss the complaint, with the concurrence of three Commission
239 members;

240 “(2) Refer the complaint to the United States Attorney for the District of
241 Columbia for possible criminal prosecution;

242 “(3) Attempt to conciliate the complaint;

243 “(4) Refer the complaint to mediation;

244 “(5) Refer the complaint for investigation; or

245 “(6) Refer the subject police officer or officers to complete appropriate
246 policy training by the MPD or the HAPD.

247 “(h) The Executive Director shall notify in writing the complainant, the subject
248 police officer or officers, and the Deputy Auditor for Public Safety of the action taken under
249 subsection (g) of this section. If the complaint is dismissed, the notice shall be accompanied by a
250 brief statement of the reasons for the dismissal, and the Executive Director shall notify the
251 complainant that the complaint may be brought to the attention of the Police Chief who may
252 direct that the complaint be investigated, and that appropriate action be taken.

253 “(i) MPD and HAPD shall notify the Executive Director when a subject police
254 officer or officers completes policy training pursuant to subsection (g)(6) of this section.

255 “(j) The Executive Director, acting on behalf of the Commission, shall have
256 unfettered, timely and complete access to documentation from the MPD, HAPD, and any
257 District-licensed security company to which the subject special officer belongs for any of the
258 duties of this section.

259 “(k) This subchapter shall also apply to any federal law enforcement agency that,
260 pursuant to Chapter 3 of this title, has a cooperative agreement with the MPD that requires
261 coverage by the Office; provided, that the Chief of the respective law enforcement department or
262 agency shall perform the duties of the MPD Chief of Police for the members of their respective
263 departments.

264 “(l) By February 1 of each year, the Office shall provide a report to the Council
265 on the effectiveness of the Metropolitan Police Department’s Body-Worn Camera Program,
266 including an analysis of use of force incidents.

267 “(m) Beginning December 31, 2023 and every December 31 thereafter, the Office
268 shall provide a report to the Mayor and Council regarding civilian complaints accepted pursuant
269 to subsections (a) and (b) of this section. The report shall include:

270 “(1) The number, type and disposition of citizen and internally-generated
271 complaints received, investigated, sustained, or otherwise resolved, and the race, national origin,
272 gender, and age of the complainant and the subject officers;

273 “(2) The proposed discipline, appeals, and the actual discipline imposed
274 on an officer as a result of any sustained complaint;

275 “(3) All use of force incidents, serious use of force incidents retaliation or
276 serious use of force as defined in MPD General order 901-07 or any subsequent orders, and
277 serious physical injury incidents; and

278 “(4) The number of cases the Office closed in the prior year by disposition
279 type;

280 “(5) The number of days it takes to close a complaint, from the date of
281 receipt of the complaint, by disposition type;

282 “(6) Reasons why cases are closed as dismissed on the merits, by
283 disposition type and merit categorization.”.

284 (i) Section 10(d) (D.C. Official Code § 5-1109(d)) is amended to read as follows:

285 “(d)(1) After a case is referred to the United States Attorney but a decision to
286 prosecute is pending, the Executive Director shall endeavor to complete all possible investigative
287 processes within his or her authority.

288 “(2) The Executive Director may complete an administrative investigation,
289 including conducting interviews of subject officers, in cases where the public interest weighs

290 against delaying the completion of the administrative investigation until after the United States
291 Attorney decides whether to prosecute. The Executive Director shall only be able to complete an
292 administrative investigation under this subsection after receiving authorization from the
293 Commission through a majority a vote and consultation with the prosecutor.”.

294 (j) Section 12 (D.C. Official Code § 5–1111) is amended as follows:

295 (1) Subsection (i) is amended to read as follows:

296 “(i)(1) If the complaint examiner determines that one or more allegations
297 in the complaint is sustained, the Executive Director shall transmit the entire complaint file,
298 including the merits determination of the complaint examiner, to the Police Chief for appropriate
299 action.”

300 “(2) Within 45 days of receipt of the complaint file, the Police
301 Chief shall provide written comment to the Executive Director confirming or rejecting the
302 Office’s recommended disciplinary action for the sustained allegations. If the Police Chief
303 rejects a recommended disciplinary action, the comment shall explain the justification for the
304 rejection.

305 (2) A new subsection (j) is added to read as follows:

306 “(j) If the complaint examiner determines that no allegation in the
307 complaint is sustained, the Executive Director shall dismiss the complaint and notify the parties
308 and the Police Chief in writing of such dismissal with a copy of the merits determination.”.

309 (k) Section 13 (D.C. Official Code § 5–1112) amended by adding a new subsection (f-1)
310 to read as follows:

311 “(f-1) In addition to providing notice under subsection (f), the Police Chief shall
312 provide written comment to the Executive Director and the Deputy Auditor for Public Safety

313 confirming or rejecting the Office’s recommended disciplinary action for the sustained
314 allegations. If the Police Chief rejects a recommended disciplinary action, the comment shall
315 explain the justification for the rejection.”.

316 (l) Section 16 (D.C. Official Code § 5–1115) is amended as follows:

317 (1) Subsection (a) is amended by striking the phrase "Board" and inserting the
318 phrase “Commission” in its place.

319 (2) Subsection (b) is amended by striking the phrase "Board" and inserting the
320 phrase “Commission” in its place.

321 Sec. 4. Section 1108(c-2) of the District of Columbia Government Comprehensive Merit
322 Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-
323 611.08(c-2)) is amended by added a new paragraph (6) to read as follows:

324 “(6) Each Commissioner of the Police Accountability Commission shall be entitled to a
325 stipend of \$5,000 per year for their service on the Commission; the Chairperson shall be entitled
326 to \$7,000 per year. Each member also shall be entitled to reimbursement of actual travel and
327 other expenses reasonably related to attendance at commission meetings the performance of
328 official duties.”.

329 Sec. 5. Section 204 of The Freedom of Information Act of 1976, effective March 29,
330 1977 (D.C. Law 1-96; D.C. Official Code § 2-534) is amended as follows:

331 (1) Subsection (a)(3) is amended by striking the phrase “Office of Police
332 Complaints” and inserting the phrase “Office of Police Accountability” in its place.

333 (2) Subsection (a)(3)(A)(iii) is amended by striking the phrase “Office of Police
334 Complaints” and inserting the phrase “Office of Police Accountability” in its place.

335 (3) Subsection (a)(12) is amended by striking “;” and inserting “or for records
336 described in subsection (d-1) of this section;”

337 (4) A new subsection (d-1) is added to read as follows:

338 “(d-1)(1) The provisions of this section shall not apply to disciplinary
339 records of officers with the Metropolitan Police Department or the District of Columbia Housing
340 Authority Police Department (HAPD).

341 “(2) For purposes of this subsection, the term “disciplinary
342 records” means any record created in the furtherance of a disciplinary proceeding against an
343 MPD or HAPD officer, including:

344 “(A) The complaints, allegations, and charges against an
345 officer;

346 “(B) The name of the officer complained of or charged;

347 “(C) The transcript of any disciplinary trial or hearing,
348 including any exhibits introduced at such trial or hearing;

349 “(D) The disposition of any disciplinary proceeding; and

350 “(E) the final written opinion or memorandum supporting
351 the disposition and discipline imposed including the agency's complete factual findings and its
352 analysis of the conduct and appropriate discipline of the officer.

353 “(3) When providing records pursuant to subsection (d-1)(1), the
354 responding agency may redact:

355 “(A) Technical infractions. “Technical infraction” means a
356 minor rule violation, solely related to the enforcement of administrative departmental rules that

357 (a) do not involve interactions with members of the public, and (b) are not otherwise connected
358 to such person's investigative, enforcement, training, supervision, or reporting responsibilities.

359 “(B) Items involving the medical history of the officer or
360 complainant, not including any records obtained during the course of an investigation such
361 officer’s misconduct that are relevant to the disposition of the investigation;

362 “(C) The home addresses, personal telephone numbers,
363 personal cell phone numbers, or personal email addresses of any officer or complainant;

364 “(D) Any social security numbers; or

365 “(E) Disclosure of the use of any employee assistance
366 program, mental health service, or substance abuse treatment service by an officer or
367 complainant unless such use is mandated by a disciplinary proceeding that may be otherwise
368 disclosed pursuant to this subsection.”.

369 Sec. 6. Chief of Police and MPD Policies and Procedures.

370 (a)(1) The Chief of Police shall submit non-administrative policies and procedures, and
371 changes in training curriculum, to the Police Accountability Commission (“Commission”) for
372 comment. The Commission shall have 45 days to review and provide comments to the Chief
373 before said policies, procedures, and trainings are finalized and binding upon employees of the
374 MPD. The Chief shall consider the comments of the Commission prior to issuing final policies
375 and procedures.

376 (2) If the Chief rejects proposed changes to the policy, procedure or training
377 suggested by the Commission, he or she shall provide a written comment to the Commission
378 within 30 days of receiving the Commission’s comments. The comment shall contain a
379 justification for the rejection.

380 (b) Where the Chief determines it necessary to issue binding policies and procedures
381 before submitting them to the Commission, he or she shall submit the interim policies or
382 procedures to the Commission pursuant to (a).

383 Sec. 7. Officer Disciplinary Records Database.

384 By December 23, 2023, the Metropolitan Police Department shall publish a database that
385 contains the following information:

386 (a) Rank and shield history of each sworn officer;

387 (b) Department commendations, recognition or awards of each sworn officer;

388 (c) Trainings, including in-service, promotional, and other modules, that each sworn
389 officer have received; and

390 (d) Disciplinary history and records of each sworn officer, consistent with D.C. Official
391 Code § 2-534(d-1)(1)-(d-1)(3).

392 Sec. 8. Fiscal impact statement.

393 The Council adopts the fiscal impact statement in the committee report as the fiscal
394 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
395 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

396 Sec. 9. Effective date.

397 This act shall take effect following approval by the Mayor (or in the event of veto by the
398 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
399 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
400 24, 1973, (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
401 Columbia Register.



GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

May 14, 2021

Kathleen Patterson
District of Columbia Auditor
Office of the District of Columbia Auditor
717 14th Street, NW, Suite 900
Washington, DC 20005

Dear Ms. Patterson,

Thank you for providing the Metropolitan Police Department (MPD) with an opportunity to review the draft Office of the District of Columbia Auditor (ODCA) report, “*MPD and the Use of Deadly Force: The Deon Kay Case.*” We recognize that as our country tackles the important issue of police reform nationwide, we must ensure that our policies and training continue to serve as models for de-escalating situations whenever possible and promoting the sanctity of human life.

The loss of Mr. Kay’s life is tragic, for his family, friends, and community, and indeed, our city. Nevertheless, the report confirmed our findings that the officer’s use of deadly force in this case was justified. As a progressive police department committed to fair and constitutional policing, we remain open to examining and improving our policies and training to ensure that deadly force is used only as a last resort. Accordingly, with one limited exception, we agree with the recommendations outlined in your report, and have started working on implementation. Our specific responses to your recommendations, along with projected implementation dates, appear below.

ODCA Recommendation Summary	MPD Response
1. Revise the MPD use of force investigations policy to ensure that IAD investigations are sufficiently comprehensive to allow the UFRB to meet its mandate.	AGREE MPD agrees with this recommendation. MPD is currently revising our use of force orders consistent with your previous report and will include this recommendation in our revision. Target Implementation: September 2021
2. IAB should mandate that, in every case involving the use of deadly force, interviews of relevant witnesses be conducted at least twice and walkthroughs with involved officers should be recorded.	AGREE IN PART MPD agrees in part with this recommendation. MPD agrees that involved officers should be interviewed at least twice in every case involving deadly force and that walkthroughs should be recorded. However, we believe the recommendation’s wording of interviewing “relevant witnesses” may be interpreted too broadly to mean that every witness will be interviewed twice, including non-involved officers

ODCA Recommendation Summary	MPD Response
	<p>and witnesses. While we do not believe interviewing witnesses twice is always necessary, we will ensure our investigators conduct complete and thorough interviews in all cases. As you know, MPD cooperated with the auditor’s suggestion that the audit team supply areas of questioning for the interviews in the Kay investigation, and we will use what we have learned to strengthen our investigative questioning techniques going forward.</p> <p>The requirements that involved officers be interviewed at least twice in deadly force cases and that walkthroughs be recorded will be memorialized in our updated use of force order when it is published.</p> <p>Target Implementation: September 2021</p>
<p>3. MPD should create a policy that defines the purpose and function of Crime Suppression Teams.</p>	<p>AGREE MPD agrees with this recommendation. MPD will issue a policy governing the operations of the district crime suppression teams.</p> <p>Target Implementation Date: September 2021</p>
<p>4. CST officials should receive specialized training in management and leadership principles, as well as risk assessment, planning, and leadership. CST members should be trained, and retrained at regular intervals, on matters relevant to their assignments and should “embrace the principles of working with the community, reducing bias, and improving cultural competency.”</p>	<p>AGREE MPD agrees with this recommendation. MPD’s Metropolitan Police Academy is developing training for both CST officials and officers that addresses the recommended topics.</p> <p>Target Implementation Date: October 2021</p>
<p>5. MPD should create a policy on the use of social media in conducting criminal investigations.</p>	<p>AGREE MPD agrees with this recommendation. MPD is drafting a policy governing the use of social media for investigative purposes.</p> <p>Target Implementation Date: September 2021</p>
<p>6. MPD should develop a policy on foot pursuits.</p>	<p>AGREE MPD agrees with this recommendation. MPD has reached out to other jurisdictions as well as the International Association of Chiefs of Police to review best practices. We have also engaged with our union to begin discussing development of a policy that will provide guidance to our officers</p>

ODCA Recommendation Summary	MPD Response
	<p>that appropriately balances the need for foot pursuits in some circumstances with the potential risk factors pursuits may present to officer safety and members of the public.</p> <p>Target Implementation Date: September 2021</p>
<p>7. The Use of Force Review Board (UFRB) findings should improve how Board feedback is memorialized by including more detailed findings of fact, more detailed “soft feedback” on how the officers could have improved tactically, and more specific recommendations related to MPD training and policy.</p>	<p>AGREE</p> <p>MPD agrees with this recommendation. The UFRB will revise the format of their findings to better capture recommendations and feedback provided by the Board.</p> <p>Target Implementation Date: October 2021</p>

In closing, we would like to thank your office and The Bromwich Group for your continued work on this important issue. MPD is committed to ensuring our use of force policies, training, and practices remain a model for the nation, and we believe the implementation of these recommendations will further strengthen our agency and serve the District of Columbia. Please do not hesitate to contact us if you have any further questions.

Sincerely,



Robert J. Contee III
Chief of Police