

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

DRAFT

TO: All Councilmembers

FROM: Chairman Phil Mendelson
Committee of the Whole

DATE: November 17, 2020

SUBJECT: Report on Bill 23-886, the “Washington Metropolitan Area Transit Authority Police Accountability Amendment Act of 2020”

The Committee of the Whole, to which Bill 23-886, the “Washington Metropolitan Area Transit Authority Police Accountability Amendment Act of 2020” was referred, reports favorably thereon with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

On May 25th, George Floyd, a 46-year old Black man in Minneapolis, was killed by a police officer who suffocated him with his knee, leading to a wave of protests across the country against racism and police brutality. This outrage, however, is just another in a string of incidents of brutality resulting in the deaths of Eric Garner, Michael Brown, Tamir Rice, Freddie Gray, Sandra Bland, Alton Sterling, Philando Castile, Breonna Taylor, Ahmaud Arbery, Rayshard Brooks, and other Black men and women at the hands of police. These incidents have led to not only protests around the United States and in the District, but also a desire for structural reform to policing.

A core expectation of anyone who has an interaction with a police officer is that police officers should be held accountable for their actions. The District has, since 1999, had an independent police complaints board that can review complaints by civilians against the police at the Metropolitan Police Department and the Housing Authority Police Department. The District’s Police Complaints Board was recently been strengthened through emergency legislation. While the Washington Metropolitan Area Transit Authority (Metro) also has a large

police presence throughout Metro facilities in the District, it's unique governance structure has made it difficult to institute similar reforms with regard to the Metro Transit Police.

These concerns were highlighted in a recent performance oversight hearing jointly held between the Council Committee on Facilities and Procurement and the Committee on Judiciary and Public Safety. At that hearing, a number of witnesses identified not only problematic uses of force by the Metro Transit Police, but also the existence of a quota system that is used to incentivize aggressive enforcement measures by Metro Transit Police. While this program has been discontinued, reports indicate that the volume of enforcement actions remains a means for evaluating police officers within the Department. Systems that incentivize or evaluate officers based on aggressive enforcement encourage confrontations between officers and riders and can result in the unnecessary escalation of conflicts. In addition to the need for a Metro Police Complaints Board, these quotas, including regarding arrests, citations, or warnings, should be ended.

A series of recent high-profile incidents and uses of force by Metro Transit Police have demonstrated the clear need for greater accountability and civilian oversight. The lack of an independent forum for police complaints and the complex governance structure of the Authority have left District residents feeling they have few effective outlets to raise concerns about police behavior on Metro. In order to address this issue, the Committee recommends the creation of a Police Complaints Board, modeled in large part off of the effective system for the District of Columbia, but with a governance structure reflecting the inter-jurisdictional nature of the Authority.

The committee print for Bill 23-886 largely reflects the bill as introduced. The structure of the proposed Metro Transit Police Complaints Board is based on the current structure of the District's Police Complaints Board, including the recently strengthened provisions. In addition, the committee print as revised by the Committee of the Whole expands on the ability of the Metro Transit Police Complaints Board to request information from police departments that are located within a Metro jurisdiction (in the Metro Compact this is known as the Washington Metropolitan Area Transit Zone). The intent is to allow the Metro Transit Police Complaints Board to request information related to a Metro Police-related complaint that may be in the possession of another jurisdiction's police department, including the District's Metropolitan Police Department.

In order to effectuate this legislation, an amendment must be made to the Washington Metropolitan Area Transit Authority Compact. Any such amendment requires each of the three signatory jurisdictions (Maryland, Virginia and the District) to concur through legislation. Congress must then give its consent. The Compact was last amended in 2017 through the creation of the Metrorail Safety Commission.

By moving this compact amendment, the Committee begins a process that will result in more consistent accountability for police officers both within the District of Columbia and across the Metro system. The Committee of the Whole recommends the approval of Bill 23-886 the "Washington Metropolitan Area Transit Authority Police Accountability Amendment Act of 2020" as amended in the committee print.

II. LEGISLATIVE CHRONOLOGY

- September 8, 2020 Bill 23-886, the “Commemoration Task Force Act of 2019” is introduced by Councilmember Robert White and co-introduced by Chairman Mendelson and Councilmember Allen.
- September 18, 2020 Notice of Intent to Act on Bill 23-886 is published in the *Register*.
- September 22, 2020 Bill 23-787 is officially read at the regularly scheduled Committee of the Whole and referred to the Committee of the Whole with comments from the Committee on the Judiciary and Public Safety and Committee on Facilities and Procurement.
- October 9, 2020 Notice of a Public Hearing on Bill 23-886 is published in the *Register*.
- October 27, 2020 A Public Hearing is held on Bill 23-886 by the Committee of the Whole.
- November 17, 2020 The Committee of the Whole marks up Bill 23-886.

III. POSITION OF THE EXECUTIVE

The Committee received no testimony or comments from the Executive on Bill 23-886.

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee written testimony for the record from ANC 4B that outlined the myriad shortcomings of the current Metro Transit Police force and the process for reviewing and addressing citizen complaints.

V. SUMMARY OF TESTIMONY

The Committee of the Whole held a Public Hearing on Bill 23-886, the “Washington Metropolitan Area Transit Authority Police Accountability Amendment Act of 2020” on October 27, 2020. The testimony summarized below is from that hearing. Copies of testimony are attached to this report.

Adofo Salim, Commissioner, ANC 8C07, testified in support of Bill 23-886 and described problems in submitting civilian complaints under the current Metro Transit Police structure.

Monica Hopkins, Executive Director, American Civil Liberties Union of the District of Columbia, provided written testimony for the record in support of the legislation.

There was no testimony or written comments in opposition to Bill 23-886.

VI. IMPACT ON EXISTING LAW

Bill 23-886 is a freestanding bill that approves the creation of a Metro Transit Police Complaints Board in the WMATA compact between the District of Columbia, the State of Maryland and the Commonwealth of Virginia.

VII. FISCAL IMPACT

Funds are sufficient in the fiscal year 2021 through fiscal year 2024 budget and financial plan to implement the provisions of the proposed legislation. A copy of the November 16, 2020 Fiscal Impact Statement is attached to this report.

VIII. SECTION-BY-SECTION ANALYSIS

<u>Section 1</u>	States the short title of the Bill 23-886.
<u>Section 2</u>	Establishes the Metro Transit Police Complaints Board.
<u>Section 3</u>	Applicability.
<u>Section 4</u>	Adopts the Fiscal Impact Statement.
<u>Section 5</u>	Establishes the effective date by stating the standard 30-day congressional review language.

IX. COMMITTEE ACTION


X. ATTACHMENTS

1. Bill 23-886 as introduced.
2. Written testimony and comments.
3. Fiscal Impact Statement.
4. Legal Sufficiency Review.

5. Committee Print for Bill 23-886.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington D.C. 20004

Memorandum

To : Members of the Council
From : 
Nyasha Smith, Secretary to the Council
Date : Wednesday, September 16, 2020
Subject : Re-Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Tuesday, September 08, 2020. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Washington Metropolitan Area Transit Authority Police Accountability Amendment Act of 2020", B23-0886


INTRODUCED BY: Councilmembers R. White, Allen, and Chairman Mendelson

The Chairman is re-referring this legislation to Committee of the Whole with comments from the Committee on Facilities and Procurement and the Committee on Judiciary and Public Safety.


Attachment

cc: General Counsel
Budget Director
Legislative Services

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4 Chairman Phil Mendelson
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Councilmember Robert C. White, Jr.


Councilmember Charles Allen

12 A BILL

17 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

21 To amend the Washington Metropolitan Area Transit Authority Regulation Compact to prohibit
22 the use of enforcement quotas for the Metro Transit Police Department and to create a
23 multijurisdictional Civilian Complaint Board to review complaints against Metro Transit
24 Police Department members.

26 BE IT ENACTED BY THE COUCIL OF THE DISTRICT OF COLUMBIA, That this
27 act may be cited as the "Washington Metropolitan Area Transit Authority Police Accountability
28 Amendment Act of 2020".

29 Sec. 2. Section 76 of Article XVI of Title III of the Washington Metropolitan Area
30 Transit Authority Regulation Compact, approved November 6, 1996 (80 Stat. 1324; D.C.
31 Official Code § 9-1107.01(76)), is amended as follows:

32 (a) Subsection (f) is amended by adding a new paragraph (1A) to read as follows:

33 "(1A) prohibit the use of enforcement quotas to evaluate, incentivize, or discipline
34 members, including with regard to the number of arrests made or citations or warnings issued;"

35 (b) A new subsection (i) is added to read as follows:

36 "(i)(1) The Authority shall establish a Police Complaints Board to review complaints
37 filed against the Metro Transit Police.

38 "(2) The Police Complaints Board shall comprise eight members, two civilian
39 members appointed by each Signatory, and two civilian members appointed by the federal
40 government.

41 "(3) Members of the Police Complaints Board shall not be Authority employees
42 and shall have no current affiliation with law enforcement.

43 "(4) Members of the Police Complaints Board shall serve without compensation
44 but may be reimbursed for necessary expenses incurred as incident to the performance of their
45 duties.

46 "(5) The Police Complaints Board shall appoint a Chairperson and Vice-
47 Chairperson from among its members.

48 "(6) Four members of the Police Complaints Board shall constitute a quorum, and
49 no action by the Police Complaints Board shall be effective unless a majority of the Police
50 Complaints Board present and voting, which majority shall include at least one member from
51 each Signatory, concur therein.

52 "(7) The Police Complaints Board shall meet at least monthly and keep minutes
53 of its meetings.

54 "(8) The Police Complaints Board, through its Chairperson, may employ qualified
55 persons or utilize the services of qualified volunteers, as necessary, to perform its work,
56 including the investigation of complaints.

57 "(9) The duties of the Police Complaints Board shall include:

58 “(A) Adopting rules and regulations governing its meetings, minutes, and
59 internal processes; and

60 “(B) With respect to the Metro Transit Police, reviewing:

61 “(i) The number, type, and disposition of citizen complaints
62 received, investigated, sustained, or otherwise resolved;

63 “(ii) The race, national origin, gender, and age of the complainant
64 and the subject officer or officers;

65 “(iii) The proposed and actual discipline imposed on an officer as a
66 result of any sustained citizen complaint;

67 “(iv) All use of force incidents, serious use of force incidents, and
68 serious physical injury incidents; and

69 “(v) Any in-custody death.

70 “(10) The Police Complaints Board shall have the authority to receive complaints
71 against members of the Metro Transit Police, which shall be reduced to writing and signed by the
72 complainant, that allege abuse or misuse of police powers by such members, including:

73 “(A) Harassment;

74 “(B) Use of force;

75 “(C) Use of language or conduct that is insulting, demeaning, or
76 humiliating;

77 “(D) Discriminatory treatment based upon a person’s race, color, religion,
78 national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity
79 or expression, family responsibilities, physical disability, matriculation, political affiliation,
80 source of income, or place of residence or business;

81 “(E) Retaliation against a person for filing a complaint; and

82 “(F) Failure to wear or display required identification or to identify oneself
83 by name and badge number when requested to do so by a member of the public.

84 “(11) If the Metro Transit Police receives a complaint containing subject matter
85 that is covered by paragraph (10) of this subsection, the Metro Transit Police shall transmit the
86 complaint to the Police Complaints Board within 3 business days after receipt.

87 “(12) The Police Complaints Board shall have timely and complete access to
88 information and supporting documentation specifically related to the Police Complaints Board’s
89 duties and authority under paragraphs (9) and (10) of this subsection; provided that:

90 “(A) The Police Complaints Board shall keep confidential the identity of
91 persons other than the subject or subjects of a complaint named in any documents transferred
92 from the Metro Transit Police.

93 “(B) The disclosure or transfer of any public record, document, or
94 information from the Metro Transit Police to the Police Complaints Board shall not constitute a
95 waiver of any privilege or exemption that otherwise could be asserted by the Metro Transit
96 Police to prevent disclosure to the general public or in a judicial or administrative proceeding.

97 “(13) The Police Complaints Board shall have the authority to dismiss, conciliate,
98 mediate, investigate, adjudicate, or refer for further action to the Metro Transit Police a
99 complaint received under paragraph (10) of this subsection.

100 “(14)(A) If deemed appropriate by the Police Complaints Board, and if the parties
101 agree to participate in a conciliation process, the Police Complaints Board may attempt to
102 resolve a complaint by conciliation.

103 “(B) The conciliation of a complaint shall be evidenced by a written
104 agreement signed by the parties which may provide for oral apologies or assurances, written
105 undertakings, or any other terms satisfactory to the parties. No oral or written statements made in
106 conciliation proceedings may be used as a basis for any discipline or recommended discipline
107 against a subject police officer or officers or in any civil or criminal litigation.

108 “(15) If the Police Complaints Board refers the complaint to mediation, the Board
109 shall schedule an initial mediation session with a mediator. The mediation process may continue
110 as long as the mediator believes it may result in the resolution of the complaint. No oral or
111 written statement made during the mediation process may be used as a basis for any discipline or
112 recommended discipline of the subject police officer or officers, nor in any civil or criminal
113 litigation, except as otherwise provided by the rules of the court or the rules of evidence.

114 “(16) If the Police Complaints Board refers a complaint for investigation, the
115 Board shall assign an investigator to investigate the complaint. When the investigator completes
116 the investigation, the investigator shall summarize the results of the investigation in an
117 investigative report which, along with the investigative file, shall be transmitted to the Board,
118 which may order an evidentiary hearing.

119 “(17) The Police Complaints Board may, after an investigation, assign a
120 complaint to a complaint examiner, who shall make written findings of fact regarding all
121 material issues of fact, and shall determine whether the facts found sustain or do not sustain each
122 allegation of misconduct. If the complaint examiner determines that one or more allegations in
123 the complaint is sustained, the Police Complaints Board shall transmit the entire complaint file,
124 including the merits determination of the complaint examiner, to the Metro Transit Police for
125 appropriate action.

126 “(18) Employees of the Metro Transit Police shall cooperate fully with the Police
127 Complaints Board in the investigation and adjudication of a complaint. An employee of the
128 Metro Transit Police shall not retaliate, directly or indirectly, against a person who files a
129 complaint under this subsection.

130 “(19) When, in the determination of the Police Complaints Board, there is reason
131 to believe that the misconduct alleged in a complaint or disclosed by an investigation of a
132 complaint may be criminal in nature, the Police Complaints Board shall refer the matter to the
133 appropriate authorities for possible criminal prosecution, along with a copy of all of the Police
134 Complaints Board’s files relevant to the matter being referred; provided, that the Police
135 Complaints Board shall make a record of each referral, and ascertain and record the disposition
136 of each matter referred and, if the appropriate authorities decline in writing to prosecute, the
137 Police Complaints Board shall resume its processing of the complaint.

138 “(20) Within 60 days before the end of each fiscal year, the Police Complaints
139 Board shall transmit to the Board and the Signatories an annual report of its operations, including
140 any policy recommendations.”

141 Sec. 3. Applicability.

142 This act shall apply after the enactment of concurring legislation by the State of
143 Maryland and the Commonwealth of Virginia, the signing and execution of the legislation by the
144 Mayor of the District of Columbia and the Governors of Maryland and Virginia, and approval by
145 the United States Congress.

146 Sec. 4. Fiscal impact statement.

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

150 Sec. 5. Effective date.

151 This act shall take effect following approval by the Mayor (or in the event of veto by the
152 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
153 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
154 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
155 Columbia Register.

**Statement on behalf of the
American Civil Liberties Union of the District of Columbia
before the
D.C. Council Committee of the Whole
Hearing on
B23-0886 – “Washington Metropolitan Area Transit Authority Police Accountability
Amendment Act of 2020”
by Monica Hopkins, Executive Director
October 27, 2020**

Hello, Chairman Mendelson and members of the Committee. My name is Monica Hopkins and I am the Executive Director of the American Civil Liberties Union of the District of Columbia (ACLU-DC). The ACLU-DC is committed to working to dismantle systemic racism, improve police accountability, safeguard fundamental liberties, and advocate for sensible, evidence-based solutions to public safety and criminal justice policies. I present the following testimony on behalf of our 13,500 members, in support of Bill 23-886 – the “Washington Metropolitan Area Transit Authority Police Accountability Amendment Act of 2020”. This legislation is long overdue.

Introduced by Councilmembers Robert White, Allen, and Chairman Mendelson on September 8, the purpose of Bill 23-886 is to provide better oversight and accountability of Washington Metropolitan Area Transit Authority (WMATA or Metro/Transit) Police. As introduced, the bill bars the Metro Transit Police Department (MTPD) from using quotas to evaluate, incentivize, or discipline members, including number of arrests made or citations and warnings issued. The bill also creates a civilian complaints board for filing complaints against Metro police.

We applaud Councilmember Robert White for his leadership and recognize the important steps the Council has already taken by removing criminal penalties for fare evasion,¹ and including a subtitle with these provisions in the Comprehensive Policing and Justice Reform Second Temporary Amendment Act of 2020, passed this July.² We strongly urge the Council to pass Bill 23-886 and offer recommendations to strengthen the bill.

Abusive practices by Metro police are not new phenomena. Indeed, years of complaints, advocacy, and litigation³ by community members, advocates, and the ACLU-DC demonstrate a systemic pattern of

¹ See “B22-0408 - Fare Evasion Decriminalization Act of 2017.” Enacted January 22, 2019. Available at <https://lms.dccouncil.us/Legislation/B22-0408>.

² See *Subtitle R. “Metro Transit Police Department Oversight and Accountability,”* B23-0826 - Comprehensive Policing and Justice Reform Second Temporary Amendment Act of 2020. Available at <https://lms.dccouncil.us/Legislation/B23-0826>.

³ In *Hall v. Wood*, 1:13-cv-00658-JDB (2013), the ACLU-DC successfully sued MTPD on behalf of Tiffany Hall and her then 14-year old son. An MTPD officer had placed Hall’s son in a chokehold, pepper-sprayed him, and punched him the torso repeatedly. Complaint available at https://www.acludc.org/sites/default/files/field_documents/hall.1.complaint.pdf.

unnecessary excessive use of force by MTPD officers—primarily targeting the District’s Black, Brown, and low income communities. Allegations of selective enforcement and unnecessary use of force by Metro Transit police even prompted Councilmembers Robert White and Allen to hold a hearing on the agency’s practices.⁴ In most cases, members of the public are stopped and harassed over issues that pose no immediate danger to the public, such as eating at a Metro station or fare evasion. Just this summer, the ACLU-DC settled a suit against a MTPD officer who forcibly removed a Black woman from a Metro station for no reason.⁵

On the evening of June 22, 2019, a member of the public captured on video an incident in which MTPD Officer Jonathan Costanzo tased Metro customer Tapiwa Musonza, as he was verbally advocating for a teenager detained by officers on a platform at the U St.-Cardozo Metro station.⁶ In 2018, a MTPD officer pinned down a 24-year-old woman accused of fare evasion and intimidated her with a taser at the Ft. Totten Metro station. The officer also ripped her shirt, exposing her chest.⁷ In another 2018 incident, Diamond Rust, a 20-year-old woman presumed to have evaded bus fare, was tackled by MTPD officers in front of her two small children. The incident caused multiple injuries.⁸ In June 2017, a man was stopped, pinned to the ground, and pepper-sprayed in the Gallery Place Station. Residual spray caused choking and eye irritation to other customers in the area.⁹

In October 2016, a teenager was grabbed and her legs kicked out from under her by Metro officers, who arrested the teenager for eating chips and a lollipop in the Columbia Heights Metro station. Video footage of the incident shows an officer hooking his arm in the teen’s elbow and then kicking the back of her knees, forcing her to the ground, and then pushing her back down when she propped herself up against a wall.¹⁰

In *Winslow v. Taylor*, 1:13-cv-00659(2013), the ACLU-DC successfully brought suit against after a MTPD officer slammed a 14-year-old girl’s head against a bus shelter, causing a concussion and impairment thereafter. Complaint available at https://www.acludc.org/sites/default/files/field_documents/winslow.1.complaint_5.8.13.pdf.

⁴ See archived video of the Facilities & Procurement & Judiciary & Public Safety Public Oversight Roundtable on the Metro Transit Police Department’s Policing Practices and Their Impact on Communities of Color, held November 12, 2019. Available at http://dc.granicus.com/MediaPlayer.php?view_id=44&clip_id=5424.

⁵ See *Lewis v. Faltz*, 020 SC3 001910 (D.C. Small Cl. April 6, 2020)

⁶ Quander, M. “‘Stripped of my dignity’ | Man Sues Metro Transit Police Officers After Viral Stun Gun Video.” WUSA9, September 25, 2019. Available at <https://www.wusa9.com/article/news/local/dc/mansuesmetropolice/65-dd26de8f-1017-4526-b941-434006dad5ea>.

⁷ WJLA. “Video: Woman Held Down During Arrest at Fort Totten Metro Station Sparks Controversy.” May 21, 2018. Available at <https://wjla.com/news/local/video-woman-held-down-arrested-at-fort-totten-metro-station-sparks-controversy>.

⁸ Quander, M. “Graphic Arrest Pictures Spark Debate Over Metro Fare Evasion.” WUSA9, February 11, 2018. Available at <https://www.wusa9.com/article/news/local/dc/graphic-arrest-pictures-spark-debate-over-metro-fare-evasion/65-517431966>.

⁹ Hempbill, A. “Metro Transit Police Use Pepper Spray on Suspect Inside Gallery Place Station.” Fox5, June 27, 2017. Available at <https://www.fox5dc.com/news/metro-transit-police-use-pepper-spray-on-suspect-inside-gallery-place-station>.

¹⁰ Powers, M. “Metro Transit Police Arrest Teenager for Carrying Chips and Lollipop Into Station.” The Washington Post, October 19, 2016. Available at <https://www.washingtonpost.com/local/trafficandcommuting/metro-transit-police->

Far from an exhaustive list of incidents, these examples of unwarranted use of force by MTPD officers show the types of abusive practices that continue a long history of violence against Black and Brown communities by law enforcement—practices that continue erosion of the community’s trust in police.

A 2018 report by the Washington Lawyers’ Committee revealed that 91 percent of citations and summonses by Metro police were issued to Black people, while only eight percent were issued to white people. Citations and summonses were disproportionately issued to Black men. Even Black children as young as seven years old were stopped.¹¹ The report also found that MTPD officers targeted Metro stations that are heavily used by youth of color, with 15 percent of all stops in or around the Gallery Place Station and 14 percent in or around the Anacostia Station.

As if the highlighted incidents and data above were not disturbing enough, a February Washington Post article¹² revealed that a supervisor in WMATA’s District 1 police station created a weekly competition that encouraged officers based in Fort Totten to make arrests and other enforcement actions. Though this “contest” lasted only one month, it confirmed to many community members long-held concerns about Metro police being under pressure to make arrests in order to meet quotas. There is no telling how long this practice would have continued, and how many innocent lives it would have impacted, had it not been brought to the attention of a top commander or an anonymous complaint not been sent to Councilmember Allen’s office.

The use of quotas in policing is harmful to both members of the community and officers. When quotas are used to incentivize performance (e.g., promotions), officers are pressured to focus on making arrests and citations for conduct that does not require such an aggressive response.¹³ That, in turn, results in more people needlessly thrust into the criminal justice system, where even an arrest record can lead to a slew of collateral consequences that can affect people’s careers and families. Moreover, since Metro Transit officers have a history of disproportionately targeting Black and Brown people, quotas likely exacerbate racial inequality and hold back communities of color.

[arrest-teenager-for-carrying-chips-and-lollipop-into-station/2016/10/19/1360a014-9627-11e6-bb29-bf2701dbe0a3_story.html](https://www.washlaw.org/wp-content/uploads/2016/10/19/1360a014-9627-11e6-bb29-bf2701dbe0a3_story.html).

¹¹ 72% of citations were issued to Black men, 20% to Black women, and 46% to Black youth (under 25 years of age). Banks, M. & Gunston, E. “UNFAIR: Disparities in Fare Evasion Enforcement by Metro Police.” Washington Lawyers’ Committee for Civil Rights and Urban Affairs. 2018. Available at https://www.washlaw.org/wp-content/uploads/2018/12/2018_09_13_unfair_disparity_fair_evasion_enforcement_report.pdf.

¹² George, J. “Metro Transit Police Held a Competition To Encourage Arrests and Other Enforcement.” The Washington Post, February 12, 2020. Available at https://www.washingtonpost.com/local/trafficandcommuting/metro-transit-police-held-a-competition-to-encourage-arrests-and-other-enforcement/2020/02/12/02146d84-4dd7-11ea-9b5c-eac5b16dafa_story.html.

¹³ See Knafo, S. “How Aggressive Policing Affects Police Officers Themselves,” The Atlantic, July 13, 2015. Available at <https://www.theatlantic.com/business/archive/2015/07/aggressive-policing-quotas/398165/>.

ACLU-DC Recommendations:

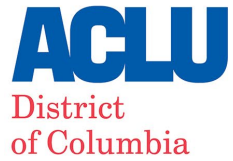
What is clear from the above account is that past calls for more oversight, and even the decriminalization of fare evasion, have not halted Metro Transit officers' abusive behavior towards riders and has certainly not led to greater accountability. That is why the Council must act. The ACLU-DC supports this legislation, but strongly recommends that the Council bolster its protections through the recommendations that follow to ensure that riding the metro is a safe activity for everyone.

The ACLU-DC supports the creation of a Police Complaints Board (PCB) to review complaints filed against Metro police, and agrees that members of this Board should not be WMATA employees or have any current affiliation with law enforcement. Bill 23-886 grants the Board authority to receive and review complaints, as well as dismiss, conciliate, mediate, investigate, adjudicate, or refer complaints to the Metro Transit Police for further action. But as we have noted in previous testimony with regards to the Metropolitan Police Department, police cannot be reasonably expected to police themselves. Therefore, authorizing the Board merely to refer complaints back to Metro Transit Police defeats the purpose of having third-party oversight. To ameliorate this weakness, we recommend that the Council expand the WMATA Police Complaints Board's role by granting it the authority to impose or, at minimum, recommend disciplinary action. We also suggest that any discipline made by the Board be made publicly accessible.

With regards to the Board's investigative powers, we also recommend authorizing the Board to institute investigations *sua sponte* if it discovers additional forms of misconduct while conducting an investigation (e.g., during review of body-worn camera footage). Additionally, the list of incidents that the PCB can investigate omits claims of unlawful searches and seizures. The Board should be authorized to investigate any incident involving a violation or potential violation of federal or local law by a Metro Transit officer.

Finally, when negotiating to settle lawsuits involving alleged Transit Police misconduct, WMATA insists on a non-disclosure agreement as part of the settlement. The non-disclosure agreement covers not only the amount of the settlement, but the very existence of the lawsuit, including the name(s) of the officer(s) involved. Because of this policy, the ACLU-DC, for example, cannot tell the Council about most cases we have filed against WMATA officers for misconduct that ended in settlements.¹⁴ We recommend that the Council include a provision in Bill 23-886 that prohibits WMATA from including non-disclosure agreements in settlements. Settlement agreements in all lawsuits involving claims of WMATA Transit Police misconduct should be public documents and should be made available to members of the public upon request. The D.C. Office of Attorney General and the U.S. Department of Justice recognize that settlements are matters of public interest and do not seek non-disclosure agreements in their settlements.

¹⁴ The two cases we have cited in footnote 3, above, involved settlements involving juveniles, and were therefore filed on the public record for court approval.



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acludc.org

We understand that any amendment to the WMATA Charter must also be passed in identical form by both the Maryland and Virginia state Legislatures and be approved by Congress. We look forward to working with the Council, our Maryland and Virginia affiliates, and the community to ensure that a strong amendment that protects the community is adopted.

Councilmember Phil Mendelson
Chairperson
Committee of the Whole
1350 Pennsylvania Avenue NW Suite 410
Washington, DC 20004
Sent via Email: pmendelson@dccouncil.us

Thank you, Chairman Mendelson, for the opportunity to present testimony to be added to the record on Bill 23-886, the “Washington Metropolitan Area Transit Authority Police Accountability Amendment Act of 2020”. This testimony is being submitted on behalf of Advisory Neighborhood Commission ANC 4B (the Commission).

With approximately 500 officers, the Metro Transit Police Department (MTPD) is the largest police department directly funded by the District of Columbia, but it is not subject to oversight internally or externally. Under the leadership of Chief Ronald A. Pavlik, Jr., (the Chief) MTPD has functioned in an opaque manner with significant deficiencies in structure and operations including, but not limited to inadequate oversight and accountability, ill-defined and non-independent complaint practices that fail to provide confidence to complainants and concerned citizens and failure to participate in external accountability mechanisms such as the District Office of Police Complaints or the Metro Office of the Inspector General.

In addition, the MTPD Chief has fostered a toxic culture among his officers which has led to a pattern and practice of excessive force and mishandling of interactions with juveniles, excessive interactions and arrests focused on people of color, officers charged with violating the civil rights of passengers and convicted of providing material support for terrorist groups, engaging in competitions led by command staff to arrest and cite citizens of the District of Columbia and the use of special escorts and trains for white nationalists and racists to enable their activity within the District of Columbia. Lastly, the Chief has allowed officers accused of excessive force to remain on duty and in contact with the public, work directly with white nationalists and racists to coordinate their travel to the District of Columbia and minimize and dismiss concerns about officers engaged in competition to arrest and cite the riding public.

At this time the Commission feels it is imperative to the integrity of MTPD and to regain the confidence of the community that the District of Columbia’s delegates to the WMATA Board of Directors act swiftly to ensure the Chiefs removal with the possibility of a jurisdictional veto for the annual Metro budget if WMATA fails to act. An interim Chief should be appointed with input from the WMATA Board of Directors, DC Council and our local and federal partners following a nation-wide search. The interim Chief must have extensive experience in best practices regarding community engagement, de-escalation, ethical policing, interaction with people of color and juveniles, those with disabilities, physical and mental, and comprehensive data collection and analysis.

On January 28, 2020, the Metropolitan Police Department (MPD) issued new general

orders regarding their interaction with juveniles. In part these new guidelines prohibit the handcuffing of juveniles ages 12 and under unless they are a danger to self or others, provide officers with discretion on whether to handcuff juveniles aged 13-17 based on the severity of the alleged offense and circumstances of the interaction, limits the arrest of juveniles on scene whenever possible and encourages officers to apply for a custody order (arrest warrant) where there is no immediate jeopardy to public safety, expands eligibility for juvenile diversion in lieu of arrests by removing criteria that disqualified certain Metro and school-related incidents, consolidates guidance on juvenile policy and procedure into a concise general order and provides for an Office of Attorney General (OAG) Emergency Hotline available to MPD officers 24/7 to consult with an OAG juvenile section supervisor about arrests, custody orders and warrants. The Commission encourages MTPD to adopt similar policies and practices to those articulated by MPD with regard to interacting with juveniles to ensure these exchanges begin to foster trust and respect among juveniles and MTPD.

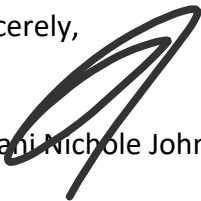
The Commission is aware that WMATA has created the MTPD Investigation Review Panel whose mandate is to review and submit recommendations to the Chief on changes to MTPD's policy and training methodology. While appreciative of this multijurisdictional effort, this panel does not meet the immediate needs of the community to provide immediate review of MTPD interactions to determine if a person's rights and/or MTPD policies and procedures were violated.

That role appears to be assigned to the MTPD Complaints Board, pursuant to the above-mentioned act. This Board's function is similar to the District Office of Police Complaints, in that it will review and investigate citizen complaints and make findings of fact if misconduct occurred and referrals for possible criminal prosecution or other sanctions.

While both the Panel and Board have separate mandates, the Commission is concerned as to how they will liaise with one another as they are apt to overlap in their specified roles. What initial, quarterly or yearly training will be provided to the members of each to ensure they remain up to date on any revised policies and procedures, training regime and best practices. How and in what mechanism will the actions of the Panel and Board be timely relayed to the WMATA Board of Directors, DC Council and the community? While both are in the beginning stages of their implementation these are questions which must be answered and codified legislatively to ensure compliance.

The Commission thanks the Committee of the Whole for holding this hearing and welcomes any questions you may have.

Sincerely,



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7 A BILL

8
9 23-886

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12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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17 To amend the Washington Metropolitan Area Transit Authority Regulation Compact to prohibit
18 the use of enforcement quotas for the Metro Transit Police Department and to create a
19 multijurisdictional Civilian Complaint Board to review complaints against Metro Transit
20 Police Department members.
21

22 BE IT ENACTED BY THE COUCIL OF THE DISTRICT OF COLUMBIA, That this
23 act may be cited as the “Washington Metropolitan Area Transit Authority Police Accountability
24 Amendment Act of 2020”.

25 Sec. 2. Section 76 of Article XVI of Title III of the Washington Metropolitan Area
26 Transit Authority Regulation Compact, approved November 6, 1996 (80 Stat. 1324; D.C.
27 Official Code § 9-1107.01(76)), is amended as follows:

28 (a) Subsection (f) is amended by adding a new paragraph (1A) to read as follows:

29 “(1A) prohibit the use of enforcement quotas to evaluate, incentivize, or discipline
30 members, including with regard to the number of arrests made or citations or warnings issued;”.

31 (b) A new subsection (i) is added to read as follows:

32 “(i)(1) The Authority shall establish a Metro Transit Police Complaints Board to review
33 complaints filed against the Metro Transit Police.

34 “(2) The Metro Transit Police Complaints Board shall comprise eight members,
35 two civilian members appointed by each Signatory, and two civilian members appointed by the
36 federal government.

37 “(3) Members of the Metro Transit Police Complaints Board shall not be
38 Authority employees and shall have no current affiliation with law enforcement.

39 “(4) Members of the Metro Transit Police Complaints Board shall serve without
40 compensation but may be reimbursed for necessary expenses incurred as incident to the
41 performance of their duties.

42 “(5) The Metro Transit Police Complaints Board shall appoint a Chairperson and
43 Vice-Chairperson from among its members.

44 “(6) Four members of the Metro Transit Police Complaints Board shall constitute
45 a quorum, and no action by the Metro Transit Police Complaints Board shall be effective unless
46 a majority of the Metro Transit Police Complaints Board present and voting, which majority
47 shall include at least one member from each Signatory, concur therein.

48 “(7) The Metro Transit Police Complaints Board shall meet at least monthly and
49 keep minutes of its meetings.

50 “(8) The Metro Transit Police Complaints Board, through its Chairperson, may
51 employ qualified persons or utilize the services of qualified volunteers, as necessary, to perform
52 its work, including the investigation of complaints.

53 “(9) The duties of the Metro Transit Police Complaints Board shall include:

54 “(A) Adopting rules and regulations governing its meetings, minutes, and
55 internal processes;

56 “(B) Making policy recommendations to Signatories; and

57 “(C) With respect to the Metro Transit Police, reviewing:

58 “(i) The number, type, and disposition of civilian complaints

59 received, investigated, sustained, or otherwise resolved;

60 “(ii) The race, national origin, gender, and age of the complainant

61 and the subject officer or officers;

62 “(iii) The proposed and actual discipline imposed on an officer as a

63 result of any sustained citizen complaint;

64 “(iv) All use of force incidents, serious use of force incidents, and

65 serious physical injury incidents; and

66 “(v) Any in-custody death.

67 “(10) The Metro Transit Police Complaints Board shall have the authority to

68 receive complaints against members of the Metro Transit Police, which shall be reduced to

69 writing and signed by the complainant, that allege abuse or misuse of police powers by such

70 members, including:

71 “(A) Harassment;

72 “(B) Use of force;

73 “(C) Use of language or conduct that is insulting, demeaning, or

74 humiliating;

75 “(D) Discriminatory treatment based upon a person’s race, color, religion,

76 national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity

77 or expression, family responsibilities, physical disability, matriculation, political affiliation,

78 source of income, or place of residence or business;

79 “(E) Retaliation against a person for filing a complaint; and

80 “(F) Failure to wear or display required identification or to identify oneself
81 by name and badge number when requested to do so by a member of the public.

82 “(11) If the Metro Transit Police receives a complaint containing subject matter
83 that is covered by paragraph (10) of this subsection, the Metro Transit Police shall transmit the
84 complaint to the Metro Transit Police Complaints Board within 3 business days after receipt.

85 “(12) The Metro Transit Police Complaints Board shall have timely and complete
86 access to information and supporting documentation specifically related to the Metro Transit
87 Police Complaints Board’s duties and authority under paragraphs (9) and (10) of this subsection,
88 and may make reasonable requests for access to information and supporting documentation of a
89 police department located within the Washington Metropolitan Area Transit Zone where an
90 alleged incident occurred; provided that:

91 “(A) The Metro Transit Police Complaints Board shall keep confidential
92 the identity of persons other than the subject or subjects of a complaint named in any documents
93 transferred from the Metro Transit Police.

94 “(B) The disclosure or transfer of any public record, document, or
95 information from the Metro Transit Police to the Metro Transit Police Complaints Board shall
96 not constitute a waiver of any privilege or exemption that otherwise could be asserted by the
97 Metro Transit Police to prevent disclosure to the general public or in a judicial or administrative
98 proceeding.

99 “(13) The Metro Transit Police Complaints Board shall have the authority to
100 dismiss, conciliate, mediate, investigate, adjudicate, provide policy training, participate in rapid
101 resolution, or refer for further action to the Metro Transit Police a complaint received under
102 paragraph (10) of this subsection.

103 “(14)(A) If deemed appropriate by the Metro Transit Police Complaints Board,
104 and if the parties agree to participate in a conciliation process, the Metro Transit Police
105 Complaints Board may attempt to resolve a complaint by conciliation.

106 “(B) The conciliation of a complaint shall be evidenced by a written
107 agreement signed by the parties which may provide for oral apologies or assurances, written
108 undertakings, or any other terms satisfactory to the parties. No oral or written statements made in
109 conciliation proceedings may be used as a basis for any discipline or recommended discipline
110 against a subject police officer or officers or in any civil or criminal litigation.

111 “(15) If the Metro Transit Police Complaints Board refers the complaint to
112 mediation, the Board shall schedule an initial mediation session with a mediator. The mediation
113 process may continue as long as the mediator believes it may result in the resolution of the
114 complaint. No oral or written statement made during the mediation process may be used as a
115 basis for any discipline or recommended discipline of the subject police officer or officers, nor in
116 any civil or criminal litigation, except as otherwise provided by the rules of the court or the rules
117 of evidence.

118 “(16) If the Metro Transit Police Complaints Board refers a complaint for
119 investigation, the Board shall assign an investigator to investigate the complaint. When the
120 investigator completes the investigation, the investigator shall summarize the results of the
121 investigation in an investigative report which, along with the investigative file, shall be
122 transmitted to the Board, which may order an evidentiary hearing.

123 “(17) The Metro Transit Police Complaints Board may, after an investigation,
124 assign a complaint to a complaint examiner, who shall make written findings of fact regarding all
125 material issues of fact, and shall determine whether the facts found sustain or do not sustain each

126 allegation of misconduct. If the complaint examiner determines that one or more allegations in
127 the complaint is sustained, the Metro Transit Police Complaints Board shall transmit the entire
128 complaint file, including the merits determination of the complaint examiner, to the Metro
129 Transit Police for appropriate action.

130 “(18) Employees of the Metro Transit Police shall cooperate fully with the Metro
131 Transit Police Complaints Board in the investigation and adjudication of a complaint. An
132 employee of the Metro Transit Police shall not retaliate, directly or indirectly, against a person
133 who files a complaint under this subsection.

134 “(19) When, in the determination of the Metro Transit Police Complaints Board,
135 there is reason to believe that the misconduct alleged in a complaint or disclosed by an
136 investigation of a complaint may be criminal in nature, the Metro Transit Police Complaints
137 Board shall refer the matter to the appropriate authorities for possible criminal prosecution, along
138 with a copy of all of the Metro Transit Police Complaints Board’s files relevant to the matter
139 being referred; provided, that the Metro Transit Police Complaints Board shall make a record of
140 each referral, and ascertain and record the disposition of each matter referred and, if the
141 appropriate authorities decline in writing to prosecute, the Metro Transit Police Complaints
142 Board shall resume its processing of the complaint.

143 “(20) Within 60 days before the end of each fiscal year, the Metro Transit Police
144 Complaints Board shall transmit to the Board and the Signatories an annual report of its
145 operations, including any policy recommendations.”.

146 Sec. 3. Applicability.

147 This act shall apply after the enactment of concurring legislation by the State of
148 Maryland and the Commonwealth of Virginia, the signing and execution of the legislation by the

149 Mayor of the District of Columbia and the Governors of Maryland and Virginia, and approval by
150 the United States Congress.

151 Sec. 4. Fiscal impact statement.

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

155 Sec. 5. Effective date.

156 This act shall take effect following approval by the Mayor (or in the event of veto by the
157 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
158 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
159 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
160 Columbia Register.