

1 **AMENDMENT IN THE NATURE OF A SUBSTITUTE**  
2 **Bill 23-886**  
3 **December 15, 2020**  
4 **Chairman Mendelson**

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8 A BILL

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10 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 be comprised of eight  
35 members: two civilian members appointed by each Signatory pursuant to the Signatory’s  
36 applicable laws, and two civilian members appointed by the 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 any law enforcement agency.

39 “(4) Members of the Metro Transit Police Complaints Board shall serve without  
40 compensation but may be reimbursed for necessary expenses incurred as incidental 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~~ A majority of the appointed members ~~of the Metro Transit Police~~  
45 ~~Complaints Board~~ shall constitute a quorum, ~~and no. No~~ action by the Metro Transit Police  
46 Complaints Board shall be effective unless approved by a the majority ~~of the Metro Transit~~  
47 ~~Police Complaints Board is present and voting, which majority shall~~ includes at least one  
48 member from each Signatory.

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

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

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

55 “(A) Adopting rules and regulations governing its meetings, minutes, ~~and~~  
56 internal processes, and implementation of this subsection;

57 “~~(B) Making policy recommendations to Signatories; and~~

58                               “(CB) With respect to the Metro Transit Police, reviewing:  
59                               “(i) The number, type, and disposition of ~~civilian~~ complaints  
60 received, investigated, sustained, or otherwise resolved ~~by the Metro Transit Police;~~  
61                               “(ii) The race, national origin, gender, and age of the complainant  
62 and the subject officer or officers;  
63                               “(iii) The proposed and actual discipline imposed on an officer as a  
64 result of any sustained ~~citizen~~ complaint;  
65                               “(iv) All use of force incidents, serious use of force incidents, and  
66 serious physical injury incidents; and  
67                               “(v) Any in-custody death; and

68                               “(C) Making policy recommendations to Signatories; and

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

73                               “(10) All complaints against members of the Metro Transmit Police that  
74 allege abuse or misuse of police powers shall be received by or transmitted to the Metro  
75 Transit Police Complaints Board. All complaints shall be reduced to writing and signed by  
76 the complainant. Examples of complaints include:

77                               “(A) Harassment;  
78                               “(B) Use of force;  
79                               “(C) Use of language or conduct that is insulting, demeaning, or  
80 humiliating;

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

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

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

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

91 **“(12) To be timely, a complaint must be received by the office within 90 days**  
92 **from the date of the incident that is the subject of the complaints. The Board (or its staff)**  
93 **may extend the deadline for good cause.**

94 **“(13) If a complaint alleges misconduct that is not within the authority of the**  
95 **Board to review, the Board shall refer the allegation to the Metro Transit Police Chief or**  
96 **the Authority’s General Manager, as appropriate, for further processing.**

97 “~~(12)~~14) The Metro Transit Police Complaints Board shall have timely and  
98 complete access to information and supporting documentation specifically related to the Metro  
99 Transit Police Complaints Board’s duties and authority under paragraphs (9) and (10) of this  
100 subsection, and may make reasonable requests for access to information and supporting  
101 documentation of a police department located within the Washington Metropolitan Area Transit  
102 Zone where an alleged incident occurred; provided that:

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

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

111                   “~~(1315)~~ The Metro Transit Police Complaints Board shall have the authority to  
112 dismiss, conciliate, mediate, investigate, adjudicate, provide policy training, participate in rapid  
113 resolution, or refer for further action to the Metro Transit Police a complaint received under  
114 paragraph (10) of this subsection.

115                   “~~(1416)~~(A) If deemed appropriate by the Metro Transit Police Complaints Board,  
116 and if the parties agree to participate in a conciliation process, the Metro Transit Police  
117 Complaints Board may attempt to resolve a complaint by conciliation.

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

123                   “~~(1517)~~ If the Metro Transit Police Complaints Board refers the complaint to  
124 mediation, the Board shall schedule an initial mediation session with a mediator. The mediation  
125 process may continue as long as the mediator believes it may result in the resolution of the  
126 complaint. No oral or written statement made during the mediation process may be used as a

127 basis for any discipline or recommended discipline of the subject police officer or officers, nor in  
128 any civil or criminal litigation, except as otherwise provided by the rules of the court or the rules  
129 of evidence.

130 “~~(1618)~~ If the Metro Transit Police Complaints Board refers a complaint for  
131 investigation, the Board shall assign an investigator to investigate the complaint. When the  
132 investigator completes the investigation, the investigator shall summarize the results of the  
133 investigation in an investigative report which, along with the investigative file, shall be  
134 transmitted to the Board, which may order an evidentiary hearing.

135 “~~(1219)~~ The Metro Transit Police Complaints Board may, after an investigation,  
136 assign a complaint to a complaint examiner, who shall make written findings of fact regarding all  
137 material issues of fact, and shall determine whether the facts found sustain or do not sustain each  
138 allegation of misconduct. If the complaint examiner determines that one or more allegations in  
139 the complaint is sustained, the Metro Transit Police Complaints Board shall transmit the entire  
140 complaint file, including the merits determination of the complaint examiner, to the Metro  
141 Transit Police for appropriate action.

142 “~~(1820)~~ Employees of the Metro Transit Police shall cooperate fully with the  
143 Metro Transit Police Complaints Board in the investigation and adjudication of a complaint. An  
144 employee of the Metro Transit Police shall not retaliate, directly or indirectly, against a person  
145 who files a complaint under this subsection.

146 “~~(1921)~~ When, in the determination of the Metro Transit Police Complaints  
147 Board, there is reason to believe that the misconduct alleged in a complaint or disclosed by an  
148 investigation of a complaint may be criminal in nature, the Metro Transit Police Complaints  
149 Board shall refer the matter to the appropriate authority for possible criminal prosecution, along  
150 with a copy of all of the Metro Transit Police Complaints Board’s files relevant to the matter

151 being referred; provided, that the Metro Transit Police Complaints Board shall make a record of  
152 each referral, and ascertain and record the disposition of each matter referred and, if the  
153 appropriate authority declines in writing to prosecute, the Metro Transit Police Complaints  
154 Board shall resume its processing of the complaint.

155 “(2022) Within 60 days before the end of each fiscal year, the Metro Transit  
156 Police Complaints Board shall transmit to the Board **of Directors of the Washington**  
157 **Metropolitan Area Transit Authority** and make public an annual report of its operations,  
158 including any policy recommendations.”.

159 Sec. 3. Applicability.

160 This act shall apply after the enactment of concurring legislation by the State of  
161 Maryland and the Commonwealth of Virginia, the signing and execution of the legislation by the  
162 Mayor of the District of Columbia and the Governors of Maryland and Virginia, and approval by  
163 the United States Congress.

164 Sec. 4. Fiscal impact statement.

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

168 Sec. 5. Effective date.

169 This act shall take effect following approval by the Mayor (or in the event of veto by the  
170 Mayor, action by the Council to override the veto), a 30-day period of congressional review as  
171 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
172 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
173 Columbia Register.

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