


Government of the District of Columbia  
Office of the Chief Financial Officer



**Glen Lee**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Glen Lee  
Chief Financial Officer 

**DATE:** November 30, 2022

**SUBJECT:** Fiscal Impact Statement – Comprehensive Policing and Justice Reform  
Amendment Act of 2022

**REFERENCE:** Bill 24-320, Draft Committee Print as provided to the Office of Revenue  
Analysis on November 15, 2022

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**Conclusion**

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. The bill will cost \$1.23 million in fiscal year 2023 and \$4.99 million over the four-year financial plan.

**Background**

The bill contains 26 subtitles, as described below:

Subtitle A – The subtitle prohibits the use of neck restraints and asphyxiating restraints by law enforcement officers operating in the District, including federal officers. Officers found violating the prohibition are subject to fine and imprisonment, as are officers observing use of the technique and failing to provide or request first aid and emergency medical assistance.

Subtitle B – The subtitle places new requirements on the Metropolitan Police Department (MPD) regarding video captured on body-worn camera (BWC). MPD is already required to report on certain BWC statistics, including how many times internal investigations were opened for a failure to turn on BWC during interactions. The subtitle adds an additional reporting requirement for the results of such internal investigations, including the number of times officers were disciplined. The subtitle also adds new reporting requirements around Freedom of Information Act (FOIA) requests on BWC footage, to include the charges for FOIA requests, the actual costs incurred, and the length of time

between initial request and MPD's final response. The subtitle allows the Chairperson of the Council committee with jurisdiction over MPD to request copies of BWC for an incident, provided that the BWC is not publicly disclosed. The Councilmember representing the Ward where the incident occurred may also jointly view the BWC footage. The Mayor must publicly post to a website BWC footage for any incident involving a serious use of force or officer-involved death, including the name of the involved officer, within five business days of the incident. For any officer-involved deaths, the website must include incidents going back to the launch of the BWC program on October 1, 2014. The subtitle provides requirements for MPD to allow persons recorded in BWC video (or their next of kin or, for minors, parents) to view the footage and to consent to its posting. For officer-involved deaths, MPD must consult with an expert in trauma and grief prior to providing next of kin opportunity to view the BWC recording.

The subtitle prohibits MPD officers from reviewing their BWC footage or any BWC footage shared with them prior to writing their initial incident reports. For subsequent reports, officers must indicate if they have viewed BWC video.

Subtitle C – The subtitle expands the membership of the Police Complaints Board (PCB) from five to nine members, and it changes the membership of the current PCB after the expiration of existing members' terms. The nine members will include one representative from each Ward and one at-large representative, and no member may be affiliated with any law enforcement agency. The chair of the PCB will be selected by its members and may only remove a member for cause. The bill also expands the remit of the PCB and Office of Police Complaints (OPC) to include complaints against the Office of Inspector General (OIG) law enforcement personnel and the District of Columbia Housing Authority Police Department (DCHAPD).

The subtitle specifies that the PCB shall collaborate with the Deputy Auditor for Public Safety (created and described under Subtitle Z, below) in its reviews of the complaint review process. The subtitle requires the Police Chief to submit any proposed written directives to the PCB for its review. PCB must review the proposed directive and report on various factors including whether the directive would increase transparency, racial equity and public confidence in law enforcement. PCB must approve or disapprove the directive within 14 days. PCB will have the new authority to review a complaint that alleges making false statements in applications for search warrants, arrest warrants, or in sworn testimony. The Executive Director of the Office of Police Complaints may initiate his own complaint against a police officer if a complaint investigation finds certain evidence of abuse or misuse of police powers. The bill allows the Deputy Auditor for Public Safety to have the authority to audit complaints referred to the MPD, the DCHAPD, or the OIG for further action.

The subtitle allows complaints to be made to OPC anonymously. The subtitle allows the Director of OPC to make discipline recommendations to a law enforcement officer's agency when OPC finds a complaint is sustained. The officer's employing agency must transmit the officer's personnel records to OPC to inform OPC's discipline recommendation.

Subtitle D – The subtitle makes permanent the Use of Force Review Board created under emergency and temporary legislation to review uses of force as set forth by MPD in its written directives. The subtitle also expands the membership of the Use of Force Review Board to include five civilian members – three appointed by the Mayor and two appointed by the Council – and clarifies that the civilian members have no current or prior affiliation with law enforcement.

The Honorable Phil Mendelson

FIS: Bill 24-320, "Comprehensive Policing and Justice Reform Amendment Act of 2022," Draft Committee  
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Subtitle E – The subtitle repeals DC Code 22- 3312.03, which prohibits wearing hoods or masks with intent to discriminate, intimidate, or break the law.

Subtitle F – The subtitle places new requirements on "consent searches," which are generally searches that occur when a police officer requests to search an individual's person or property and does not have a warrant. In order to perform a consent search, officers will be required to explain to subjects using plain language and in a calm demeanor that they have a legal right to decline the search and the search will not be performed without their consent. If the officer is unable to obtain consent, the search may not be conducted.

Subtitle G – The subtitle adds requirements to the continuing education program of MPD officers. The training must include recognizing and preventing racism and white supremacy; limiting the use of force and using de-escalation tactics; the prohibition on techniques that restrict breathing; consent search requirements; and the duty and method to report suspected misconduct or excessive use of force by a law enforcement officer. The subtitle also adds four members to the Police Officers Standards and Training Board: the Executive Director of the Office of Police Complaints, and three additional community members. Each community member appointed to the board must have expertise in one of five outlined areas.

The subtitle also removes a U.S. citizenship requirement and allows permanent residents to be employed by MPD, and it requires MPD to review information on alleged or sustained misconduct and discipline if job applicants were previously employed by another law enforcement or public safety agency.

Subtitle H - The subtitle enhances requirements that helmets and uniforms MPD used during a First Amendment assembly prominently identify their affiliation as District police officers.

Subtitle I - The subtitle adds three criminal offenses for which a defendant may demand a jury trial when the victim-complainant is a law enforcement officer – assault, resisting arrest, and threats to do bodily harm.

Subtitle J – The subtitle repeals D.C. Code § 5-115.03, which, which specifies an officer commits a misdemeanor offense, punishable by fine or up to two-year imprisonment, for failure to make an arrest for an offense (including a federal offense) committed in their presence.

Subtitle K – The subtitle prohibits MPD from appointing sworn members who had any of the following experiences during prior employment by a law enforcement agency:

- (1) Committed serious misconduct, as determined by the Chief by General Order;
- (2) Terminated or was forced to resign for disciplinary reasons;
- (3) Resigned to avoid potential, proposed, or pending adverse disciplinary action or

termination.

Subtitle L - The subtitle makes the discipline of sworn law enforcement personnel a sole management right by precluding both substantive and impacts-and-effects bargaining over any matter pertaining to the discipline of sworn law enforcement personnel. The subtitle applies to any collective bargaining agreements entered into with the Fraternal Order of Police/Metropolitan Police Department Labor Committee after September 30, 2020.

Subtitle M – Current law requires MPD to initiate disciplinary actions against officers within 90 days of the incident. The subtitle repeals the 90-day limitation. The subtitle also allows the Chief of Police to increase penalties recommended by the trial board in officer discipline cases.

Subtitle N – The subtitle defines “deadly force” and codifies requirements for law enforcement officers to use deadly force, making permanent provisions existing under current temporary legislation. The subtitle further adds facts that must be considered in any judicial proceeding against an officer who has used deadly force, including whether the officer engaged in de-escalation techniques prior to using deadly force (including requesting support from a social worker or mental health professional) and whether the officer’s conduct prior to the use of deadly force had increased the risk of confrontation.

Subtitle O – The subtitle makes permanent restrictions that have been in place since fiscal year 2021, under temporary legislation, to prohibit District law enforcement agencies from acquiring certain property from the federal government, including armed or armored vehicles, bayonets, explosives, and firearms and ammunition of 0.5 caliber or above.

Subtitle P – The subtitle makes permanent prohibitions on MPD’s ability to use riot gear, chemical irritants and less-than-lethal projectiles during First Amendment assemblies. The subtitle also creates new procedures around MPD’s issuance of an order to disperse during a First Amendment assembly, including that the order must be clearly audible and understandable and issued with an amplification system. The order must be repeated three times with at least two minutes between repetitions, unless there is imminent danger to people or property. Participants must be provided with a clear and safe route to disperse. The subtitle creates a private right of action in civil court for parties injured during First Amendment assemblies. Finally, the subtitle places new requirements on MPD before it can purchase less-lethal weapons, including to publish on its website a description of the weapons sought, their physical and psychological effects, an explanation of need, technical documentation, and a description of the training personnel will receive on the weapon.

Subtitle Q – The subtitle requires the Office of Police Complaints (OPC) to conduct a study to determine whether MPD engaged in biased policing when it conducted threat assessments before or during assemblies within the District from January 2017 through January 2021 and to include recommendations in its study. Data that must be analyzed for each assembly include the number of arrests; number and types of civilian and officer injuries; crowd control techniques, and number of officers deployed. OPC must provide a report on its study to Council no later than six months after the bill’s effective date.

Subtitle R - The subtitle requires the Deputy Auditor for Public Safety (created and described under Subtitle Z, below) to conduct a comprehensive assessment of whether MPD officers have ties to white supremacist or other hate groups that may affect the officers’ ability to carry out their duties properly and fairly or may undermine public trust in MPD. The report shall include recommendations to reform or improve MPD’s hiring and training practices, policies, practice, and disciplinary system to better prevent, detect, and respond to white supremacist or other hate group ties among Department officers and staff. The report, including recommendations, must be submitted to the Mayor and Council no later than December 31, 2023.

Subtitle S – The subtitle creates new restrictions around MPD’s ability to use motor vehicles to pursue suspects also in a motor vehicle. Any pursuit must be immediately necessary to protect another person from serious injury or death and is limited to suspects who have committed or attempted a

violent crime. The pursuit itself must not be likely to cause serious injury or death to any person. The subtitle outlines all the circumstances that must be considered in any judicial proceeding regarding a vehicular pursuit. Finally, the subtitle defines six vehicular pursuit techniques and classifies five of them as a "serious use of force" and classifies "ramming" as a "deadly use of force."

Subtitle T – The subtitle adds police incident data to the school discipline data that each Local Education Agency (LEA) is required to report annually to the Office of the State Superintendent for Education (OSSE). The data must include the reason for involving law enforcement officers and the type and count of weapons, controlled substances, or other contraband recovered. The subtitle also requires MPD to keep records on the number of times an officer was dispatched to, or requested by, a school, disaggregated by school. The data must include the reason for dispatch; number of arrests; the type and count of controlled substances, weapons or contraband recovered, and demographic data for the persons involved in the incident. MPD must publish the data on its website annually. (MPD previously validated data through their School Resource Officer which are not gone. Also loops in transportation to school. OCTO will update its school address layer in GIS.

Subtitle U – The subtitle makes the provisions of the Opioid Overdose Prevention Emergency Amendment Act of 2022 permanent. District government employees and contractors acting within the scope of their official duties will be authorized to distribute drug testing equipment, specifically, fentanyl test strips, to prevent opioid overdose deaths.

Subtitle V – The subtitle makes the provisions of the Metropolitan Police Department Overtime Spending Accountability Emergency Act of 2020 permanent. MPD must provide a written report every two pay periods on MPD's overtime pay spending to the Council that describes the amount spent year-to-date on overtime pay, and a description of the staffing plan and conditions justifying the overtime pay.

Subtitle W - The Metropolitan Police Department (MPD) Cadet Program is a specialized program for under 25-year-old Washingtonians to serve part-time as uniformed, civilian employees. MPD Cadets spend part of their time working specific job assignments for MPD while also working toward their college degree. To be eligible to enroll in the MPD Cadet Program, individuals must be seniors in a District high school or graduates of a District high school. The bill removes<sup>1</sup> the requirement that the high school of a Cadet's enrollment or graduation be located in the District to expand the pool of eligible applicants to the program.

Subtitle X – The subtitle provides that disciplinary records of police at MPD, DCHAPD and OIG are subject to disclosure under FOIA and mandates a new database of disciplinary records. The subtitle details information which may be redacted from a FOIA disclosure, including employee addresses, information which would identify a victim, witness, complainant or whistleblower, and whether the employee used any employee assistance program. OPC shall create a publicly accessible database of sustained allegations of police misconduct occurring after January 1, 2017, including officer rank, file, badge number, current duty status and discipline imposed. The database must be created by December 31, 2024. Before creating the database, OPC is required to establish and consult with an advisory group to provide recommendations regarding the database and FOIA disclosure. The eleven

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<sup>1</sup> By amending Section 2(a) of the Police Officer and Firefighter Cadet Programs Funding Authorization and Human Rights Act of 1977 Amendment Act of 1982, effective March 9, 1983 (D.C. Law 4-172; D.C. Official Code § 5-109.01(a)).

required members of the advisory group are outlined in the bill, and include representatives from the police departments affected, OAG, the Public Defender Service, the Fraternal Order of Police, and specified groups advocating for privacy, open government, civil liberties, the press and victim advocates.

Subtitle Y – The subtitle allows MPD to provide adult arrest records to employees or contractors working within the following District agencies:

- (a) The Criminal Justice Coordinating Council;
- (b) The Office of Gun Violence Prevention;
- (c) The Office of Neighborhood Safety and Engagement;
- (d) The Office of the Attorney General (OAG); and
- (e) The Office of Victim Services and Justice Grants.

The subtitle further grants OAG the authority to analyze and publish all arrest data that MPD transfers to OAG, and it requires MPD to cooperate with reasonable requests for information about that arrest data.

Subtitle Z – The subtitle creates the position of the Deputy Auditor for Public Safety within the Office of the District of Columbia Auditor (ODCA) and establishes the position's minimum qualifications. The Deputy Auditor for Public Safety should collaborate with the PCB and OPC to conduct periodic reviews of the complaint review process and the management of officers that may affect police misconduct, such as training and discipline. These reviews should include demographic information of complainants and involved officers and the proposed and actual discipline imposed on an officer after a sustained complaint. The Deputy Auditor should also periodically review all use of force incidents, serious use of force incidents, serious physical injury incidents and in-custody deaths occurring at MPD, DCHAPD and OIG.

### **Financial Plan Impact**

Funds are not sufficient in the fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the bill. The bill will cost \$1.23 million in fiscal year 2023 and \$4.99 million over the four-year financial plan.

MPD will absorb many of the bill's new requirements. These include updating its training and continuing education for tactics needing to be changed because of provisions in the bill, providing adult arrest records for District agencies and bodies working on violence prevention, and reporting additional BWC data. MPD requires funding for nine new staff positions. A management analyst is required to manage increased communication and workload with the Office of Police Complaints in the areas of investigations and discipline. A policy writer will liaise with the PCB on the bill's new requirement for MPD to send all draft policy directives to PCB for review and approval. An attorney is required to support the expansion of records subject to FOIA (and any associated appeals) under Subtitle X, as well as to support the increased audits conducted by the new Deputy Auditor for Public Safety. Finally, to address an expected influx of FOIA requests related to Subtitle X, MPD will need five new FOIA specialists and one FOIA supervisor.

<b>Metropolitan Police Department Costs</b>					
<b>Total Costs</b>					
	<b>FY 2023</b>	<b>FY 2024</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>Total</b>
Salaries and Fringe	\$984,000	\$1,002,000	\$1,021,000	\$1,040,000	\$4,047,000

Metropolitan Police Department Costs					
Total Costs					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
Equipment	\$23,000	\$0	\$0	\$0	\$23,000
Total MPD Costs	\$1,007,000	\$1,002,000	\$1,021,000	\$1,040,000	\$4,070,000

OPC will require two new staff positions – a policy analyst and a senior investigator – to perform the additional reviews required under the bill and exercise the bill’s additional authorities. Salaries, fringe expenses and associated equipment for the two new employees will cost OPC an average of \$204,000 annually. OPC also requires \$25,000 for IT software to post and maintain the required publicly accessible misconduct database. In total, the bill will cost OPC \$227,000 in fiscal year 2023 and \$917,000 over the four-year financial plan.

Office of Police Complaints Costs					
Total Costs					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
Salaries and Fringe	\$197,000	\$200,000	\$204,000	\$208,000	\$809,000
Equipment	\$5,000	\$0	\$0	\$0	\$5,000
Software	\$25,000	\$25,000	\$26,000	\$26,000	\$102,000
Total OPC Costs	\$227,000	\$225,000	\$230,000	\$234,000	\$917,000

OADC has sufficient funding to create the Deputy Auditor for Public Safety and complete the audits specified in the subtitle. The Deputy Auditor for Public Safety position and eight supporting staff were included in OCDA’s fiscal year 2023 budget. OADC also has sufficient funding for the costs of a contractor to complete the report required by Subtitle R.

Costs for the District of Columbia Housing Authority (DCHA) Police Department have not been included in this fiscal impact statement. The Fiscal Year 2023 budget for the District provided \$4,2 million of operating support for DCHA public safety functions through the Housing Authority Subsidy. Any impacts on DCHA from the bill could be covered through an increase in the subsidy, but they are not required to be.

Comprehensive Police and Justice Reform Amendment Act of 2022					
Total Costs					
	FY 2023	FY 2024	FY 2025	FY 2026	Total
MPD Costs	\$1,007,000	\$1,002,000	\$1,021,000	\$1,040,000	\$4,070,000
OPC Costs	\$227,000	\$225,000	\$230,000	\$234,000	\$917,000
Total Costs	\$1,234,000	\$1,228,000	\$1,251,000	\$1,274,000	\$4,987,000