

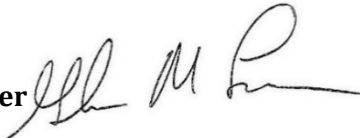
Government of the District of Columbia
Office of the Chief Financial Officer



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 6, 2023

SUBJECT: Fiscal Impact Statement – Addressing Crime Trends (ACT) Now
Amendment Act of 2023

REFERENCE: Bill B25-0555, as introduced on November 2, 2023

Conclusion

Funds are sufficient in the fiscal year 2024 through fiscal year 2027 budget and financial plan to implement the bill.

Background

The Comprehensive Policing and Justice Reform Amendment Act (CPJRAA) of 2022¹ made changes to the District's policing and law enforcement systems, including police conduct, training, continuing education, and use of deadly force and chokeholds.

Parts of CPJRAA became effective upon enactment. Specifically, certain provisions applying to the Metropolitan Police Department (MPD) and provisions applying to the Office of the Auditor of the District of Columbia that could be absorbed within current resource levels were immediately in effect.

Provisions requiring disclosure of police misconduct records through Freedom of Information Act (FOIA) requests, expansion of the Police Complaint Board and enhanced oversight of MPD directives, and development of a publicly searchable police misconduct database are subject to appropriations, and so those provisions are not in effect until funded in an approved budget and financial plan.

¹ Effective Apr. 21, 2023 (D.C. Law 24-345; 70 DCR 6316). Fiscal Impact Statement: [FIS Comprehensive Policing and Justice Reform.pdf \(dc.gov\)](#)

The Honorable Phil Mendelson

FIS: – “Addressing Crime Trends (ACT) Now Amendment Act of 2023,” Bill B25-0555, as introduced on November 2, 2023

The Addressing Crime Trends Now Amendment Act of 2023 (the Act) includes ten titles, of which eight modify CPJRAA.

1. Use of neck restraints by law enforcement

CPJRAA defined asphyxiating restraint and neck restraint and prohibited their use by law enforcement officers. The Act modifies the definition of asphyxiating restraint and neck restraint and applies these revised definitions retroactively.

2. Body-worn camera recordings

The Act modifies the provisions of CPJRAA (and MPD’s subsequent rulemaking) regarding MPD’s use of body-worn cameras and disclosure of video. CPJRAA prohibited MPD officers from viewing body-worn camera footage prior to writing their initial incident reports for certain types of incidents. Incidents covered by this requirement are those meeting the serious use of force standard—firearm discharges; head strikes, other specified use of force; and MPD canine bites.

The Act modifies this requirement so that MPD officers are not prohibited from viewing body-worn camera footage if the incident involving an injury was not previously known to the MPD officer before viewing the footage.

The Act also eliminates the requirement that, upon request of applicable Council Chair², MPD provide a copy of body-worn footage of an incident to the Chair within five days of the request.

The Act changes the standard for body-worn footage that is required to be made available to the public. Under CPJRAA, incidents involving an officer-involved death or serious use of force are required to be publicly disclosed within five days, including the release of the body-worn footage publicly.

The Act changes which incidents are included in the disclosure requirements. They are incidents involving an officer-involved death; discharge of a firearm (excepting some negligent discharges that do not put the public at risk); a head strike with an impact weapon; or use of force that results in serious bodily injury. The Act also defines serious bodily injury to be one that results in a substantial risk of death, serious disfigurement, disability, or impairment, or an extended period of unconsciousness.

3. Office of Police Complaints and release of public records

The Act changes the language regarding access to public records for the Office of Police Complaints. Specifically, the Act gives the Office of Police Complaints timely and complete access to all information.

The Act repeals the provision in CPJRAA requiring the Police Chief to submit any new or amended directive to the Police Complaints Board for its feedback and review. Although this provision was included CPJRAA, it required MPD to hire a policy writer to liaise with OPC. This was not funded so the provision did not take effect.

² The chair of the council committee with jurisdiction over MPD.

The Honorable Phil Mendelson

FIS: – “Addressing Crime Trends (ACT) Now Amendment Act of 2023,” Bill B25-0555, as introduced on November 2, 2023

Finally, the Act changes what is disclosed in the officer disciplinary records database for officers against whom an allegation of misconduct is sustained. Specifically, the Act removes officer name, badge number and current duty status from the disclosure requirements and adds race and gender.

4. Right to a jury trial

CPJRAA added 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. The Act adds that the law enforcement officer must have been in uniform or acting in their official capacity during the offense.

5. Officer discipline

CPJRAA required MPD to make publicly available the hearing schedule of adverse action cases for police officers where the proposed disciplinary action is termination. The Act removes the officer name and badge number from that public notification.

6. Use of force reforms and vehicular pursuits

The Act modifies the definition of “serious bodily injury” and the circumstances under which an officer may determine that a vehicular pursuit may be necessary. The Act also changes the phrasing regarding the threat posed by the suspects (from immediate threat to imminent threat).

The Act eliminates the categorization of certain actions taken by officers while in pursuit of a suspect to be designated as a serious use of force. Those actions are boxing in, caravanning, deploying a roadblock, deploying a tire deflation device, or paralleling. The Act also eliminates the practice of ramming by an officer to be categorized as use of deadly force.

7. Freedom of Information Act (FOIA) requests

CPJRAA added a clause to the FOIA exemptions stating that as a matter of practice, a request for officer disciplinary records shall not automatically be denied or redacted based on an officer’s right to privacy. It established a list of criteria for what material could be disclosed under FOIA (including a description of the infraction, the officer’s name, and any resulting reports or background material), and a set of limited items that can be redacted.

The Act modifies the requirement for FOIA disclosure, limiting it to cases that resulted in a penalty, demotion, or termination (and not those cases that may have been adjudicated in other ways or resulted in a policy change). The Act also allows for redaction of the officer’s name and any other personally identifiable information.

The FOIA provisions in CPJRAA were not funded and so did not take effect. Thus, this provision represents no change from current practice.

The Honorable Phil Mendelson

FIS: – “Addressing Crime Trends (ACT) Now Amendment Act of 2023,” Bill B25-0555, as introduced on November 2, 2023

8. Anti-mask law

The Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982 prohibited individuals from wearing hoods or masks with an intent to discriminate, intimidate, or break the law. CPJRAA repealed this prohibition.

The Act restores the prohibition, making it a crime for an individual to conceal one’s face with a mask or a hood in a public place if their intent is to:

- Engage in prohibited conduct;
- Deprive any person or class of people equal protection under the law;
- Force or threaten the use of force against anyone because of their exercise of legally-protected rights;
- Intimidate, threaten, abuse, or harass anyone; or
- Cause another person to fear for their personal safety.

The Act also adds this offense to the category of crimes for which a police officer may arrest a suspect without a warrant.

9. Organized retail theft

The Act creates a new felony offense—directing organized retail theft—which is the organization, recruitment, and execution of coordinated merchandise theft with the intent to resell the merchandise or return it for refund. Individuals convicted of such offense can be imprisoned for up to 15 years, subject to financial penalties, or both. The bill also adds to first-degree theft a maximum sentence of 10 years if the amount of the theft exceeds \$1,000, consists of 10 or more items stolen over a thirty-day period, or, if in carrying out such theft, the individual commits assault or destroys retail property.

The Act requires the Mayor to conduct a study of the Street Vendor Advancement Amendment Act of 2023 on public safety, pedestrian safety, and public health.

10. Drug free zones

The Act establishes a new drug-free zone policy. The Chief of the Metropolitan Police Department can establish a drug-free zone for up to 120 hours. In determining whether to designate an area as a drug-free zone, the Chief may consider arrests for drug possession or distribution; police reports for violent and dangerous crimes; homicides; or other relevant factors that indicate a high likelihood that the location is the site of the purchase, sale, or use of illegal drugs.

Drug-free zones must be identified using a flyer, barrier, or tape, and signs must disclose that the area is a drug-free zone, the timeframe the drug-free zone is in effect, and the requirements for dispersal (see below). The Chief of Police will notify the Chairman of the DC Council of any declaration of a drug-free zone.

In drug-free zones, officers are permitted to instruct groups of 2 or more people to disperse if the officer reasonably believes that the individuals are gathering to engage in the purchase, sale, or use of illegal drugs. In making that determination, the officer may consider the individual’s behavior or conduct, identification of an individual as a member of a gang or association that engages in illegal

The Honorable Phil Mendelson

FIS: – “Addressing Crime Trends (ACT) Now Amendment Act of 2023,” Bill B25-0555, as introduced on November 2, 2023

drug activity, or an individual that is known to the officer as a known drug user, possessor, or seller (and has been convicted of such crime), among other factors.

An individual who doesn’t disperse upon being directed to do so can be convicted of up to a \$300 fine and/or 180 days in prison.

Financial Plan Impact

Funds are sufficient in the fiscal year 2024 through fiscal year 2027 budget and financial plan to implement the Act.

The Act contains several provisions which revert to pre-CPJRAA law, including provisions that remain unfunded and thus are not in effect. The Metropolitan Police Department can implement the bill, including any required training resulting from the Act’s policy changes, new felony theft offense and drug zone provisions, within current resources.