



Written Testimony Supporting Establishment of the Officer Disciplinary Records Database in DC Bill 24-0356

GOVERNMENT OF THE DISTRICT OF COLUMBIA
B24-0356, THE "STRENGTHENING OVERSIGHT AND ACCOUNTABILITY OF POLICE
AMENDMENT ACT OF 2021"

Written Testimony of CEO Action for Racial Equity

For the Council of the District of Columbia Committee on the Judiciary & Public Safety's
Hearing on Thursday, October 21, 2021

Ward 6 Councilmember Charles Allen, Chairperson
Submitted: Friday, November 5, 2021

Executive Summary

CEO Action for Racial Equity (**CEOARE**) is a Fellowship of over 100 companies that mobilizes a community of business leaders with diverse expertise across multiple industries and geographies to advance public policy in four key areas — healthcare, education, economic empowerment and public safety. Its mission is to identify, develop and promote scalable and sustainable public policies and corporate engagement strategies that will address systemic racism, social injustice and improve societal well-being.

We write the Council today to voice our support for meaningful police reform. CEOARE is actively advocating across the country for the creation of police misconduct registries that can provide law enforcement agencies with complete access to candidates' misconduct records. This access will support the hiring of certified, qualified and capable individuals as officers, and assist in preventing officers who have been terminated for misconduct or resigned in lieu of termination due to misconduct from being rehired by other law enforcement agencies. CEOARE supports the establishment of the Officer Disciplinary Records Database (**the Disciplinary Database**) as included in District of Columbia (**DC or the District**) Bill 24-0356 (**the Bill**), for the following key reasons:

- The Bill builds on and proposes enacting into law many of the recommendations from the Decentering Police to Improve Public Safety, A Report of the DC Police Reform Commission (**Police Reform Commission**), April 1, 2021, delivered to the Council of the District of Columbia [\[1\]](#), (**Police Reform Commission Report**), specifically, the Disciplinary Database.
- The proposed Disciplinary Database will promote police accountability and professionalism, in addition to improving transparency of officer misconduct and helping to rebuild the public's confidence and trust in the police officers that they interact with in their communities.



While CEOARE supports the Disciplinary Database as proposed, we ask the Council to consider the six recommendations outlined below to strengthen the proposed reform measures:

- Establish requirements for reporting to the Disciplinary Database on a prescribed schedule with penalties for noncompliance;
- Include records in the Disciplinary Database related to officers who resign in lieu of termination while a misconduct claim is pending;
- Include officer and complainant demographic data as part of the disciplinary record, consistent with collection of such demographic information under Section 1-301.191 of the DC Code, as established by the DC Neighborhood Engagement Achieves Results (NEAR) Act^[2];
- Revise and/or clarify the DC Metropolitan Police Department (MPD)'s policy of automatically purging disciplinary actions from officers' personnel files, as recommended in the Police Reform Commission Report^[3], and further, set forth how long such records should be publicly accessible through the Disciplinary Database;
- Establish an audit schedule; and
- Mandate screening of candidates for hire by the MPD and other DC police agencies against the Disciplinary Database and other misconduct databases, as available.

CEOARE appreciates the Council's consideration of our full written testimony on the following pages, which include a more detailed explanation of our six recommendations.

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Support for the Disciplinary Database in Bill 24-0356, Strengthening Oversight and Accountability of Police Amendment Act of 2021

Accountability and transparency help build trust between the police and the communities they serve, and we believe these principles should serve as the cornerstone to equitable reform efforts. For the first time in 27 years, Americans' public confidence in law enforcement dipped below 50%, falling five (5) percentage points to 48% between 2019 and 2020^[4]. **Accessibility to police officers' disciplinary history, including legal history related to misconduct, would be a critical step to restoring public confidence in the institution of policing.** Without trust and accountability, a police department cannot effectively do its job. Failure to keep communities safe is an unacceptably tragic outcome.

We commend the Council for establishing the Police Reform Commission to study and improve public safety in the District, including proposing solutions to address police accountability and transparency. It is encouraging that the findings of the Police Reform Commission Report serve as the basis for the police reform measures proposed in Bill 24-0356. **Specifically, we appreciate the Bill's inclusion of a publicly accessible police misconduct registry because it will help increase accountability and transparency in policing.**

We also applaud the MPD for recently submitting its report on disciplinary actions, grievances, and Equal Employment Opportunity investigations for calendar years 2016



through 2020, RC24-0075 (**the MPD Disciplinary Report**). The MPD Disciplinary Report is a positive step towards increasing transparency as it demonstrates that MPD does take action against officers that violate department policy. But we believe the disclosure of additional information, such as, complete data on the officers involved, the circumstances around the misconduct and the results of any investigation, would collectively enable the development of evidence-based solutions for improving public safety. For example, the MPD Disciplinary Report highlights that between 2016 and 2020, 45 MPD officers were terminated for misconduct including for personal criminal activity and unnecessary or wanton force. However, the MPD Disciplinary Report does not identify the name of the officers, resulting in the potential for the individual to be hired by another law enforcement agency that would have no knowledge of the applicant's history of misconduct.

Our nation remains impacted by the tragic killings of George Floyd, Breonna Taylor, Antwan Gilmore and many other Black Americans. These killings have exposed the significant gaps that exist in the application of equality, equity, and justice for all Americans. Today, we recognize the efforts of Chairman Mendelson and other Councilmembers for their work and intentionality in including the Disciplinary Database provisions in Bill 24-0356.

The Disciplinary Database is also commendable because it promotes “front-end” accountability, a principle advanced by the New York University School of Law Policing Project^[5] and endorsed in the Police Reform Commission Report.^[6] For some, accountability often means holding individuals accountable for their actions, which typically occurs after something has gone wrong. In the case of public safety, this often involves the loss of lives or serious bodily injury. We agree that it is critical to hold individual officers and law enforcement agencies responsible for their actions and wrongdoings. But equally paramount to meaningful police reform is:

establishing rules, regulations, and policies on the front end (before things go wrong), in a way that is transparent, evidence-based, and provides an opportunity for public input and debate. [This allows the] public to have a real voice in how it is governed. These, after all, are the very most basic elements of democracy.^[7]

The Council's proposed publicly accessible Disciplinary Database will, if enacted, help increase transparency around the system of police hiring, data collection and the officer discipline process. A registry will help shed sunlight on such structural issues as hiring practices, complaint handling and discretionary authority over officer terminations, suspensions and sanctions. Transparency of process and outcomes is key to informing the public safety solutions. **“Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants.”**^[8]

Recommendations

While the Disciplinary Database as proposed in Bill 24-0356 improves upon the current state of transparency and accountability in policing, we believe there are opportunities to strengthen the reform measures. Based on our review of leading practices in state-level police reform efforts, we recommend the following:



Data Collection

- **Records should be submitted regularly with penalties for noncompliance** – The Bill should include language that will require MPD and other DC police agencies to submit data to the Disciplinary Database on a set schedule. There is currently a DC law requiring MPD to submit an annual misconduct and grievances report (DC Code § 5-1032)[9] and the law has no penalties for noncompliance. However, eight years passed between MPD’s submission of its most recent report (RC24-0075) and its prior report (RC20-0010)[10], despite the annual reporting required under existing DC law. Accordingly, the pending DC Bill should include penalties for any agency that does not comply with the proposed registry reporting requirements. Other jurisdictions have introduced legislation setting both a schedule for data submissions and penalties for noncompliance.[11] Incentives to comply will be critical to ensuring the effectiveness of the proposed Disciplinary Database. A database with no data, incomplete or stale data, or inaccurate data would be misleading, undermine the intended transparency objectives of the law, and may result in harm to the public.
- **Disciplinary Records should include any records associated with or related to an officer’s resignation from the department** – Where officers resign prior to completion of a misconduct investigation, there may be no record of the incident. Law enforcement executives recommend closing this loophole to prevent “bad cops from resigning their way out of accountability”[12]. California SB 16[13] was recently enacted, requiring, among other reforms, release of records if an officer resigns before a misconduct investigation is complete. For these reasons, we believe the Disciplinary Database should require the entry of records involving officers who resign for misconduct in lieu of termination.
- **Demographic information should be reported as part of the discipline record** – The Bill should also require as part of a disciplinary record, the **demographics** of officers and any complainants[15], as advanced by advocacy organizations and some states. The required data elements can be similar to those currently collected for felony crime suspects and victims in DC.[16]

Record Retention

- The Police Reform Commission recommended that MPD “revise its policies and stop purging disciplinary actions automatically from officers’ personnel files after a set number of years[17].” We agree. The Bill should require that MPD revise or clarify its policies to match their stated practice of retaining “records of all disciplinary actions resulting from sustained misconduct [...] ‘regardless of passage of time’” as told by Mr. Marvin Haiman to the DC Police Reform Commission.[18] The Bill should also set forth the amount of time that disciplinary records should be publicly accessible through the Disciplinary Database.

Data Quality

- The Bill should require an **audit** of the accuracy, completeness and timeliness of inputs to the Disciplinary Database on a regular basis. The Alabama legislature passed



a bill in 2021 creating a Law Enforcement Officer Employment Database and required the state Peace Officers' Standards and Training Commission to "randomly audit law enforcement agencies' compliance with the reporting requirements" of the law.[\[19\]](#)

Utilizing Other Police Misconduct Databases

- **Screen prospective law enforcement applicants in applicable misconduct databases** – The Bill should mandate that MPD and other DC police agencies verify all applicants' certification status with the National Decertification Index[\[20\]](#) (NDI), the national database that tracks, on a voluntarily basis, decertification of law enforcement officers by the applicable state standards and training agency. This mandate would be similar to Subtitle K of DC Act A23-0336, enacted in July 2020, which makes an applicant ineligible for appointment as a sworn member of the MPD if misconduct or disciplinary reasons were the cause of a previous termination or resignation from another law enforcement agency.[\[21\]](#) Many states have proposed or enacted the requirement to screen applicants in applicable state registries[\[22\]](#) and the NDI[\[23\]](#). MPD and other police agencies should be required to check with outside jurisdictions/states, as appropriate, to see whether a police misconduct database is maintained and, if so, to check such database before hiring a candidate who has prior law enforcement experience.

Closing

As business leaders, our businesses prosper where there are thriving communities, but most importantly, as business leaders we have a responsibility to our employees and customers to help make sure that they live and work in safe, strong and healthy communities. We are choosing to use our voice to stand alongside the millions of Americans calling for meaningful police reform. We are also joined in our support of the Officer Disciplinary Records Database by the ACLU of DC. We are stepping up together because mere acknowledgement of systemic societal racism is not enough. Action is needed.

Today, we call on the Council to work quickly to make these important improvements and move to establish the Disciplinary Database. Thank you for considering our testimony and for your leadership and commitment to transforming policing in the District. Passing this Bill will set a meaningful example to the rest of the country and help preserve the safety of and create equity specifically for the over 300,000 Black Washingtonians and the thousands of other Black Americans who work in or travel through DC each day.

Thank you.



Citations

- [1] [A Report of the DC Police Reform Commission](#), April 1, 2021, “Decentering Police to Improve Public Safety”; See also, DC Police Reform Commission – Condensed List of Recommendations, April 1, 2021
- [2] [Code of the District of Columbia, § 1-301.191\(c\)\(6\)](#)
- [3] [Police Reform Commission Report](#) recommended that MPD “revise its policies and stop purging disciplinary actions automatically from officers’ personnel files after a set number of years.” [April 1, 2021](#) at 174.
- [4] Brenan, Megan, Gallup, August 12, 2020, “[Amid Pandemic, Confidence in Key U.S. Institutions Surges](#)”
- [5] Policing Project New York University School of Law, June 1, 2020 “[Our Statement Regarding Policing in the United States](#)”.
- [6] [Police Reform Commission Report, April 1, 2021](#) at 157-58.
- [7] Policing Project New York University School of Law, June 1, 2020
- [8] Brandeis, Louis, D., Harper’s Weekly, December 20, 1913, [Other People’s Money-Chapter V: “What Publicity Can Do”](#)
- [9] [Code of the District of Columbia § 5-1032](#)
- [10] RC20-0010 – Correspondence from Metropolitan Police Department- “[Metropolitan Police Department’s Report on Disciplinary Actions and Grievances for Calendar Year 2012](#)”, March 7, 2013
- [11] [George Floyd Justice in Policing Act of 2021, H.R. 120, 117th Congress](#) (GFJPA) which passed the US House of Representatives in March 2021, but has stalled in the U.S. Senate, requires applicable federal, state and local law enforcement agencies to submit information to a registry every 6 months. See Section 201(c) and (d). GFJIPA conditions a law enforcement agency’s receipt of federal funds on the agency’s compliance with the reporting requirements under the law. [South Carolina Senate Bill S124](#) also proposes authorizing the Law Enforcement Training Council to take punitive action against a law enforcement agency that refuses to implement and enforce compliance with the new training standards including issuing civil fines and excluding agencies from grant funding.
- [12] Safe Communities Institute, (May 17, 2021). [The LEWIS Registry – A Q&A with Dr. Erroll Southers](#). USC Price Safe Communities Institute; See also, Troy Riggs, Former Public Safety Director Denver, CO and Former Public Safety Director and Chief of Police, Indianapolis, IN, interview with CEOARE, August 2021, stating “*Complete and publicly available data are key to creating meaningful police misconduct registries. Communities have a right to know whether officers, entrusted with protecting the public, have been terminated, resigned for any reason, or have a pending investigation against them. Transparency is the path to building trust and accountability in policing.*”
- [13] [CA SB 16](#), 2021-2022, (California, 2021); and Press Release – State Senator Nancy Skinner (D-CA), September 30, 2021, [Governor Signs SB 16 to Expand Access to Police Records](#).
- [14] [TX H.B. 3723](#), 87th Reg. Sess. (Texas 2021).
- [15] NYU School of Law Policing Project [Draft Transparency Statute](#), VII. 2., February 8, 2021
- [16] Code of the District of Columbia [§ 1-301.191\(c\)\(6\)](#)
- [17] [Police Reform Commission Report](#) at 174
- [18] [Police Reform Commission Report](#) at 175, citing footnote 698
- [19] AL H.B. 411, 2021 Reg. Session, <https://legiscan.com/AL/bill/HB411/2021>
- [20] About NDI, International Association of Directors of Law Enforcement Standards and Training, <https://www.iadlest.org/our-services/ndi/about-ndi>



[21] [§ 5-107.01\(f\) < D.C. Code < D.C. Law Library < Reader \(dccouncil.us\)](#)

[22] [FL H 1529](#), [IL HB 3653](#) and [CA SB 16](#)

[23] [MA Session Law – Acts of 2020 Chapter 253 No. Section 3](#) and [NC S300, Section 15](#)

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