



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

Committee on the Judiciary and Public Safety
B25-0555 The Addressing Crime Trends (ACT) Now Amendment Act of 2023
Dennis A. Corkery¹
Washington Lawyers' Committee for Civil Rights and Urban Affairs
November 29, 2023

The law before the Council today encourages more violence in the District. At a time when there is an urgent crisis of violence that District leaders need to face, rolling back hard fought police reforms is an unnecessary and dangerous distraction. Following our national reckoning on the persistent reality of racism, especially in policing, the DC Council became national leaders by immediately acting to create new systems of transparency and accountability for the Metropolitan Police Department (“MPD”) and firmer restrictions on deadly force against DC residents and visitors. These reforms made the District safer by promoting responsible and Constitutional policing that focused on safety for officers, suspects, and the public. Now that violence is surging in our communities, the Mayor is calling for rolling back these reforms in the name of public safety. But unsafe policing by unaccountable officers will lead to more state violence and do nothing to stop the violence that we all want to prevent. Accordingly, on behalf of the Washington Lawyers’ Committee for Civil Rights and Urban Affairs², I ask that this Council reject the Addressing Crime Trends (ACT) Now Amendment Act of 2023.

Among other things, The ACT Now Act rolls back transparency into officer discipline by limiting the timing for the release of records, what is released, and, worst of all, officer names so that there is no accountability or way for the public to know if repeat offenders are being disciplined. It legalizes chokeholds by making it legal for an officer to hold onto someone’s neck in order to restrain their movement. The ACT Now Act instructs officers that they do not need to consider the life of a suspect when engaging in a car chase. The legislation would thwart Constitutional accountability by allowing officers to view body worn camera footage before writing reports except in delineated serious situations – meaning officers can add facts not known to them at the time they stopped and frisked individuals.

This ACT Now Act asks us to forget the serious need for reform and for greater police accountability. It asks us to forget that a police officer suffocated George Floyd in Minneapolis because he thought he could get away with it. It forgets that right here in DC, MPD officers murdered Karon Hylton-Brown because those officers did not value his life when they chased him. DC cannot hold claim to “Black Lives Matter Plaza” and then put into law that Black

¹ Dennis A. Corkery is the Interim Supervisory Counsel of the Washington Lawyers’ Committee’s Police Abuse Project.

² The Washington Lawyers’ Committee was founded in 1968, and works to create legal, economic, and social equity through litigation, client and public education, and public advocacy. While the Committee fights discrimination against all people, it recognizes the central role that current and historic race discrimination plays in sustaining inequity and the critical importance of identifying, exposing, combating, and dismantling the systems that sustain racial oppression.

civilian lives do not matter. If we are committed to ending violence in the District and saving lives, then that means that the life of everyone – suspect or civilian or officer – needs to be protected. This bill sends the message that some lives are worth more than others.

The ACT Now Act is also an affront to the fight for statehood and home rule. As citizens of the District of Columbia, we are denied the fundamental human right of representative government. Our local laws are subject to the whim of Congress, in which we have no representation. We have seen this past year that not only are the usual enemies of DC home rule attacking the District’s democratic process, but our allies have abandoned us as well.³ Democrats hold both the Senate and the White House, and yet this Council’s good governance modernization of our criminal code was overturned by both. Not long after, both Democrats and Republicans voted to overturn this Council’s Comprehensive Policing and Justice Reform Amendment Act.⁴ Only after successful lobbying to President Biden did he veto that disapproval resolution and allow DC’s police reform bill to become permanent law.⁵ The ACT Now Act would undo many of the important provisions of that legislation. To change them now would be to undo the fragile victory won on protecting home rule. Congress has shown enough disdain for the human rights of DC Citizens; this Council should not join them by passing this legislation.

I. The ACT Now Act Will Not Reduce Violence in the District Because More MPD Officers Does Not Mean Less Violence

This law will not solve our current crisis of violence in the District. More police and more policing does not mean greater safety. The District currently has the greatest number of police officers per capita—by far—of other cities with more than 35,000 residents.⁶ There is a lot of discussion about the exact number of officers that MPD employs, but that discussion ignores the reality of the thousands of special police officers and federal police that enforce DC Code violations throughout the District. Further, police presence alone does not lower rates of violence.⁷ In 2008 there were 186 homicides in DC.⁸ That same year, MPD employed 4,022 officers. In 2012, there were 88 homicides, and MPD had 3,869 officers.⁹ Accordingly, the District employed fewer officers and experienced fewer homicides. There are innumerable factors that could account for these different outcomes. The same factors are likely at play in the current crisis. But the size of MPD’s police force cannot be the only factor involved. More MPD officers is not the solution.

³ Mary Clare Jalonick & Ashraf Khalil, *Senate votes to block DC crime laws, Biden supportive*, ASSOCIATED PRESS, Mar. 8, 2023, <https://apnews.com/article/crime-district-of-columbia-biden-senate-0d9580c43711a42a3549419b23546726>.

⁴ Martin Auster Muhle, *President Biden vetoes attempt by Congress to block D.C. police bill*, WAMU88.5, May 26, 2023, <https://www.npr.org/local/305/2023/05/26/1178354102/president-biden-vetoes-attempt-by-congress-to-block-d-c-police-bill>.

⁵ *Id.*

⁶ FBI. (2019, September 22). Table 78. FBI. <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-78/table-78.xls/view>.

⁷ Martin Auster Muhle, *How Many Police Officers Does DC Really Need?*, WAMU88.5, Apr. 7, 2022, <https://www.npr.org/local/305/2022/04/07/1091462546/just-how-many-police-officers-does-d-c-really-need>.

⁸ 2023 Year-To-Date Crime Comparison, Metropolitan Police Department, <https://mpdc.dc.gov/page/district-crime-data-glance>.

⁹ *Id.*

Instead, the DC Council should ensure that the officers that DC does employ are effective and conscientious – the opposite of what the ACT Now Act promotes.

Further, the ACT Now Act will not grow MPD’s ranks even if that was the solution to ending violence. MPD was facing difficulties in hiring officers long before the 2020 racial justice protests and the subsequent reforms that this Council enacted.¹⁰ Cities across the United States are failing to attract as many officers to their forces as they used to.¹¹ Although some of these cities have similar reforms in place as the ones at issue here, others do not. For example, Missouri does not allow the release of police disciplinary records under any circumstances.¹² Yet the St. Louis Police Department is understaffed.¹³ There are likely many reasons why MPD is not hiring as many officers as it wants.¹⁴ To be sure, some officers are leaving the force because of the accountability measures that the Mayor wants to dismantle, but other officers are leaving because of the culture of disrespect within the force itself.¹⁵ Police recruitment is also part of the same national economic forces that have transformed the job market following the COVID-19 pandemic. Bus drivers,¹⁶ social workers,¹⁷ and other workers that keep the District going are also in short supply. Allowing for less accountability and more violence is not going to inspire more effective individuals to stay or join MPD, and this Council must reject these efforts.

¹⁰ Peter Hermann, D.C. police force recovering from retirement surge, but more officers are quitting, WASH. POST, Mar 26 2020, https://www.washingtonpost.com/local/public-safety/dc-police-force-recovering-from-retirement-surge-but-more-officers-are-quitting/2020/03/26/5ff41286-623d-11ea-845d-e35b0234b136_story.html/

¹¹ See, e.g., Rebecca Pryor, Baltimore Police Department offers hefty bonuses to cover staffing shortages and shift imbalances, FOX45 NEWS, Aug. 2, 2023, <https://foxbaltimore.com/news/local/baltimore-police-department-turns-to-dramatic-measures-amid-severe-staffing-shortages>; Ubah Ali, Minneapolis Police Chief Brian O’Hara unveils new plan for hiring more police officers, WCCO NEWS, Nov. 10, 2023, <https://www.cbsnews.com/minnesota/news/minneapolis-police-chief-brian-ohara-unveils-new-plan-for-hiring-more-police-officers>; Mayor Breed Proposes Expanding San Francisco’s Reserve Police Officer Program to Increase Foot Patrols, OFFICE OF THE MAYOR OF SAN FRANCISCO, Oct. 12, 2023, <https://sf.gov/news/mayor-breed-proposes-expanding-san-franciscos-reserve-police-officer-program-increase-foot#:~:text=We%20still%20need%20to%20recruit,a%20low%20point%20in%202021>.

¹² Amanda Hernandez, After George Floyd’s murder, more states require release of police disciplinary records, MISSOURI INDEPENDENT, Aug. 3, 2023, <https://missouriindependent.com/2023/08/03/after-george-floyds-murder-more-states-require-release-of-police-disciplinary-records>.

¹³ Mitch McCoy, St. Louis had only 2 officers for an entire district- Both called in sick, FOX 2, Sep. 28, 2023, <https://fox2now.com/news/fox-files/st-louis-had-only-2-officers-for-an-entire-district-both-called-in-sick>.

¹⁴ Jenny Gauthright, Like A Tiny Cog In a Broken Machine’: Overtime Mismanagement Plummet Morale and Push Cops Out of MPD, WAMU88.5, Oct. 26, 2023, <https://dcist.com/story/23/10/26/mpd-overtime-attrition-why-cops-leave>.

¹⁵ *Id.*

¹⁶ Delia Goncalves, “I’m surprised at the turnover”: Employee claims low morale and high turnover could be making DC bus driver shortage worse, WUSA9, Aug. 28, 2023, <https://www.wusa9.com/article/news/local/dc/employee-claims-low-morale-high-turnover-making-dc-bus-driver-shortage-worse/65-6ac4d3d0-bc5d-48b5-a0e5-978e7b4c0f6d>.

¹⁷ Marissa J. Lang, D.C. to set up free social work degree to ease worker shortage, WASH. POST, Nov. 8, 2023, <https://www.washingtonpost.com/dc-md-va/2023/11/08/dc-caseworker-shortage-free-degree>.

II. Full Transparency Is Vital for Accountability and Unbiased Policing

Rolling back on transparency about MPD discipline and police complaints will not keep good officers on the force and will negatively impact public safety. The public deserves to know if their police are acting with the highest standards. The database of officer discipline that this Council has already mandated allows members of the public to ensure that officers with a serious record of abuse are not allowed to continue on the force and to ensure that MPD leadership take police abuse seriously. In a civilized democracy, the police may only assert their powers with the informed consent of those that they police, and public insight into whether officers are exceeding their authority or acting with violence, bias, or disrespect is vital to informed consent. DC residents are already lacking in democratic rights that most of our country takes for granted, and this Council should not diminish those rights any more than Congress already has. This Council must reject the Mayor's call to dismantle the robust police transparency that is already in place. There cannot be true public safety without true police accountability.

The ACT Now Act undoes essential elements of police transparency. It prevents the release of records from prior to the effective date of this new law. It limits the release of records to just those for which there was a suspension, termination, or demotion. And it does not name the officer involved in the database of police discipline. In essence, it renders the release of records toothless. Putting a time restriction on the release of records under the Freedom of Information Act (FOIA) does not allow the public to review how officers have acted throughout their tenure. Not allowing the release of FOIAs about investigations that were not sustained or did not lead to discipline means the public cannot evaluate the effectiveness of the internal discipline process. Even worse, removing names from both the discipline database and FOIA responses means that it will be impossible for members of the public to determine if repeat offenders remain on the force. Full data means full understanding, and this Council must allow the public that full understanding in order to keep check on MPD.

The ACT Now Act's changes are unnecessary to protecting officers' privacy because current law is properly balanced for both the police and public. The database on officer discipline only contains incidents of "sustained allegations of misconduct pertaining to an officer's commission of a crime, the officer's interactions with members of the public, or the officer's integrity in criminal investigations."¹⁸ Current FOIA law allows MPD to withhold any records of investigations or discipline for "[t]echnical infractions solely pertaining to the enforcement of administrative departmental rules that do not involve interactions with members of the public and are not otherwise connected to the officer's investigative, enforcement, training, supervision, or reporting responsibilities" and sensitive medical information.¹⁹ Therefore officers are protected from intrusion into the medical information or employment issues that any other District employee could face. But as armed officers with the power to stop, arrest, injure, and kill, the public deserves insight into if they are abusing their power.²⁰ Public disclosure of

¹⁸ DC Code § 5-1116(a).

¹⁹ DC § Code 2-534(d-1)(2).

²⁰ Washington Post Editorial Board, Opinion: How to fight crime without scaling back officer accountability, WASH. POST, Oct. 27, 2023, <https://www.washingtonpost.com/opinions/2023/10/27/boswer-policing-plan-dc-misconduct>.

disciplinary records is not unique to police officers. As an attorney licensed to practice in the District of Columbia, discipline administered against me and any related hearings would be made available to the public.²¹ To be sure, unfounded bar complaints are kept confidential,²² whereas any substantive complaints against MPD officer are available under FOIA whether or not the complaint proceeds to the disciplinary process.²³ Yet the same is true when an officer arrests an individual: the record of that person's name and the accusations against them are made public forever regardless if the arrest was frivolous or unfounded. Safe policing means that officers must subject themselves to scrutiny for how they do their jobs; and the ACT Now Act will take that away.

Transparency also supports conscientious and law-abiding officers in MPD just as much as it deters the most problematic officers. Two years ago, I was part of a group of attorneys who represented 12 officers of color and two affinity groups in their lawsuit for widespread discrimination by our neighbor, Prince George's County.²⁴ These officers were horrified by how PGPD's culture led to racist attitudes towards the community. As part of that lawsuit, we were able to view thousands of disciplinary records that the County shielded from public view because Maryland law was highly restrictive at the time.²⁵ PG County fought tooth and nail against the public release of those records, but after several community groups, the Public Defenders, and even the States' Attorney intervened, a federal judge decided that the expert report of Michael Graham analyzing those disciplinary records must be made public because the public had a significant interest in its contents.²⁶ The "Graham Report" as it was called detailed a troubling picture of how PGPD dealt with the public, but also how white officers got away with abuse and misconduct at much higher rates than their peers of color.²⁷ The lack of transparency in PGPD did not just protect the frequent abusers on the force, it masked how poorly officers of color were treated. MPD is currently under threat from several discrimination lawsuits,²⁸ and has been subject to significant penalties for discrimination in the past decade.²⁹ Transparency will allow an extra layer to ensure that our own police department is treating officers equally no matter race, gender, or other protected characteristic. Conscientious officers will be well served by public insight into the disciplinary process of MPD and a discrimination free culture.

The ACT Now Act's changes to access of records to the Office of Police Complaints is also troubling and sends the wrong message. MPD and DC Housing Authority Officers need robust and immediate oversight of their behavior because of the responsibilities with which they

²¹ DC Bar Rule XI § 17.

²² *Id.*

²³ DC Code § 2-534(d-1)(2).

²⁴ *Hispanic Nat'l Law Enforcement Ass'n NCR v. Price George's Cnty.*, No. 18-3821, 2021 U.S. Dist. LEXIS 26546, at *5-6 (D. Md. Feb. 10, 2021).

²⁵ *Id.*

²⁶ *Id.* at 24.

²⁷ Expert Report of Michael E. Graham, Aug. 28, 2020, <https://www.washlaw.org/wp-content/uploads/2021/02/HNLEA-v-PGC-Aug-28-Graham-Report-Unsealed.pdf>.

²⁸ Maya Brown & Emma Tucker, Third lawsuit filed against DC police department alleging racism and a toxic culture, CNN, Dec. 9, 2021, <https://www.cnn.com/2021/12/09/us/metropolitan-police-department-lawsuit-racism-white-officers/index.html>.

²⁹ *See, e.g., Caudle v. District of Columbia*, No. 1:08-cv-00205-HHK (D.D.C.).

are entrusted. To that end, the Office of Police Complaints needs “unfettered” access to any relevant information. Changing that provision in the code to “timely” sends a message that law enforcement can stonewall the Office of Police Complaints, which is a professional and vital part of District government.

There is no need to roll back transparency reforms. But there is a need to make sure they stay in place. This Council should reject these provisions outright.

III. The ACT Now ACT Legalizes Chokeholds and Tells MPD that Black Lives Do Not Matter

The changes to the prohibition on chokeholds are unnecessary and dangerous. No one has cited one incident of any officer being charged or disciplined for “incidental contact” with anyone’s neck.³⁰ And despite the Mayor’s description of the law’s reforms as decriminalizing “incidental contact with the neck” it does no such thing.³¹ Instead it allows a chokehold to restrain an individual’s “movement” even if that restraint has the unintended effect of restricting that person’s airway or breathing. Three short years after our nation watched George Floyd die in Minnesota while a police officer kneeled on him to restrict his movement and years after we all watched Eric Garner suffer a similar fate in New York, there is no reason for any MPD officer to put any person at risk of suffocating in order to restrain them. This Council has already heeded the Police Reform Commission’s warnings about the proven medical dangers of even a light restriction (the weight of a housecat according to some doctors) on a person’s airway, and there is no reason to go back.³² Chokeholds are violent, and decriminalizing them cannot be the way to end violence in the District.

The changes to the prohibitions on police chases are equally dangerous and insulting to the community. The Act Now Act’s provisions instruct officers that they need not concern themselves with the life of a suspect in deciding to engage in a police chase. District law does not outright ban vehicle pursuits.³³ Instead, it allows officers to use them as a last resort to save lives, and only after having taken into account all the circumstances and risks that a police chase can impose on all involved.³⁴ The amendments here explicitly remove a consideration of the lives of the fleeing suspect or suspects. What message does the District want to send during a spike in violent deaths by saying that its own officers do not have to consider whether a speeding suspect lives or dies?

The concern over deadly police chases in DC is not academic. In October 2020, I was asked to serve as the attorney for Karon Hylton-Brown’s family while they viewed the footage of

³⁰ Mayor Bowser Announces New Legislation to Support Safe and Effective Policing, Executive Office of the Mayor, Oct. 23, 2023, <https://mayor.dc.gov/release/mayor-bowser-announces-new-legislation-support-safe-and-effective-policing>.

³¹ *Id.*

³² District of Columbia Police Reform Commission, DECENTERING POLICE TO IMPROVE PUBLIC SAFETY: A REPORT OF THE DC POLICE REFORM COMMISSION, April 1, 2021, 120.

³³ D.C. Code § 5-365.02.

³⁴ *Id.*

their son’s death. Karon was chased on his moped by MPD officers until he crashed and died.³⁵ That evening the MPD officials who showed the video wanted to show as little of it as possible. It took a call from Councilmember Trayon White to then-Chief Newsham for MPD to show the full video to the grieving family. That demonstrated a clear anti-transparency culture in the police department. A culture that this law only perpetuates. Ironically, the officers involved in Karon’s death initially indicated that they were chasing him because he was committing a violation of safety laws by not wearing a helmet, but cared nothing for his life when they started the chase. The MPD officer driving the cruiser was ultimately convicted of second degree murder, and he and his partner were convicted of trying to cover up the truth of what happened.³⁶ It has been three years since Karon was murdered. It is imperative that this Council reject any message to MPD that life is not precious and that they should not consider a suspect’s life during a police chase.

IV. Changes to the Body Worn Camera Program Will Hurt Constitutional Policing and Officer Accountability

The ACT Now Act’s provision allowing officers to review their body worn camera recordings before writing their reports will not improve policing, but it will hurt vulnerable communities. It is vital that officers, like any individual in any job, create accurate and timely records. But for police officers, there are Constitutional implications for why those records must be contemporaneous and wholly their own. Unless officers possess a warrant or witness a crime in progress, they may only stop an individual if the officer has “reasonable suspicion” of criminal activity, and may only frisk that person if there is “reasonable suspicion” that the person is armed and dangerous.³⁷ That reasonable suspicion must be based on facts that the officer making the stop *knows at the time of the stop*.³⁸ Allowing officers to review their body worn camera footage before writing their report gives allows them the chance to observe the situation after the fact and add details that never justified the stop to begin with – with little ability for the person stopped and searched to fight back.³⁹ Stop and frisk policies have a direct impact on race equity, which was the initial impetus for these reforms. MPD officers stop Black people at a highly disproportionate rate.⁴⁰ Such stops have very little chance of finding firearms.⁴¹ But this constant intrusion on people of color has a weathering impact on communities of color.⁴² For any individuals who want to challenge an unnecessary stop, a police report that contains after-the-fact impressions of an officer will make it difficult for an individual to make headway.

³⁵Jenny Gaithright, WAMU 88.5, D.C Police Officer Found Guilty of Second Degree Murder in Death of 20-Year-Old. Dec. 21, 2022, D.C Police Officer Found Guilty of Second Degree Murder in Death of 20-Year-Old.

³⁶ *Id.*

³⁷ *Terry v. Ohio*, 392 U.S. 1 (1968).

³⁸ *Kansas v. Glover*, 140 S. Ct. 1183, 1191 (2020).

³⁹ District of Columbia Police Reform Commission, DECENTERING POLICE TO IMPROVE PUBLIC SAFETY: A REPORT OF THE DC POLICE REFORM COMMISSION, April 1, 2021, 120.

⁴⁰ American Civil Liberties Union Analytics, *MPD Analysis 2021* 1, 11 (Apr. 13, 2022) (citing Metropolitan Police Department, *Stop Data 2019-2022*, available at <https://mpdc.dc.gov/stopdata> (updated Dec. 31, 2022).)

⁴¹ *Id.*

⁴² Ana Sandoiu, “Weathering”; What are the Health Effects of Stress and Discrimination?, MEDICAL NEWS TODAY, Feb. 26, 2021, <https://www.medicalnewstoday.com/articles/weathering-what-are-the-health-effects-of-stress-and-discrimination>.

Indeed it is these smaller, less high profile encounters that need this restriction, not the high profile ones that this bill already sequesters from an officer's initial view.

To that end, the changes to the provisions on automatic release of body camera footage send a troubling message to MPD officers and the DC residents and visitors that they police. Just like the provisions about disciplinary records, the automatic release of body worn camera footage to the public for significant police actions allows DC residents and visitors to see how they are being policed and to take immediate political action if needed. Automatic release of footage allows for immediate accountability and quells any efforts of the District to hide problematic policing or of the public to assume that there is a cover-up. The ACT Now Act does not remove the automatic release provision generally, but in its new definition section it excludes a category of firearm incidents from automatic release, such as "negligent discharge" and "range incidents." In this current crisis of gun violence, any discharge of a weapon by anyone in the District is serious, and the public should be able to have immediate access and oversight of how weapons are being handled.⁴³

DC residents and visitors deserve to live, work, and exist in a safe and vibrant city. That means communities free of violence from both civilians and the police. Creating accountability and transparency in MPD can safeguard against violent, aggressive, and unconstitutional police practices. Accountable and transparent policing garners community trust and supports good officers. The DC Council made significant strides in accountability, transparency, and in limiting state violence when it responded to the killing of George Floyd in 2020. The Council does not need to undo those reforms. Officers need to value the lives of all individuals if we want an end to our violence streak.

⁴³ More troubling is the exclusion of recordings of firing at animals. People's pets should not die at MPD Officer's whim. They are part of the family, and their loss can be devastating. If MPD officers are killing animals on duty, the public needs to have full access to those incidents. MPD officers have controversially killed pets before. Aja Beckham, D.C. Police Allegedly Shot a Dog at an Anacostia Residence, Then Gave the Owner a Ticket, WAMU88.5, Dec. 7, 2020, <https://dcist.com/story/20/12/07/dc-police-dog-shooting-unleashed-ticket-november>. The United States Department of Justice has expressed alarm over the use of deadly force against animals nationwide. Dale Chappell, DOJ: Police Shooting Family Dogs has Become "Epidemic," CRIMINAL LEGAL NEWS, June 16, 2018, <https://www.criminallegalnews.org/news/2018/jun/16/doj-police-shooting-family-dogs-has-become-epidemic>. It is also problematic, that this provision couples with the changes to officers reviewing their own footage. Allowing officers to review footage of animal shootings before they create reports allows them to the ability to conform their stories to what the camera shows and not the facts as they perceived them, because as the case with stop and frisk, the Constitution limits the ability of the police to kill pets based on what the officers knew at the time of the incident. *Robinson v. Pezzat*, 818 F.3d 1, 7-8 (D.C. Cir. 2016).