



Committee on the Judiciary and Public Safety
Performance Oversight Hearing: Metropolitan Police Department
Testimony of Dennis A. Corkery¹
Washington Lawyers Committee for Civil Rights and Urban Affairs²
February 13, 2024

The District is at an inflection point for how its criminal legal system will impact vulnerable residents. For years, the DC Council has modeled common sense reforms that emphasize true public safety over mass incarceration and over-policing. The Second Look Act, the NEAR Act, the police discipline database, the end of cash bail, and decriminalizing marijuana and street vending without a license are examples of strides that the District has taken to have a more sensible criminal legal system. The current crisis of violence, however, has inspired some to call for a return to failed policies of the past. The Washington Lawyers' Committee for Civil Rights and Urban Affairs ("WLC") urges that, as the Council works to bring an end to this epidemic, you work to confront the root causes of violence and, to ensure true public safety, work to make our local police force transparent, accountable, and effective.

Unfortunately, when it comes to its Gang Database, the Metropolitan Police Department ("MPD") is none of those things. This testimony will explain how the shoddy and ineffective way that MPD has maintained this Database has an adverse impact on Black and Brown residents of DC, is ineffective in stopping violence, and demonstrates the need for even greater transparency and accountability from MPD. The way that MPD has handled the Gang Database also shows the risk that it will use drug free zones as an opportunity to harass and over police Black and Brown residents with little impact on crime. Finally, the Council should focus its efforts on disrupting the root causes of violence in our city such as poverty, inequity, and the presence of guns.

I. The DC Council Must Dismantle the DC Gang Database.

A recent report that the WLC³ issued about MPD's Gang Database shows that since 2009, MPD has maintained a racially discriminatory secret surveillance regime. Through its secret Gang Tracking and Analysis System (the DC Gang Database), MPD has surveilled

¹ Dennis A. Corkery is the Interim Supervising Counsel for Police Abuse at the Washington Lawyers' Committee for Civil Rights and Urban Affairs.

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.

³ The Report's authors include the Washington Lawyers' Committee for Civil Rights and Urban Affairs, Chicago Justice Project, Black Swan Academy, Civil Rights Corps, and National Immigration Project. The report was additionally contributed to by Upturn and the Public Defender Service for the District of Columbia.

thousands of Black and Latinx residents.” The report,⁴ entitled “Targeted, Labeled, Criminalized: Early Findings on the District of Columbia’s Gang Database” is based on data obtained in 2022 from multiple Freedom of Information Act requests by the WLC and partner organizations. We sent a copy of this report to each Councilmember and we are very grateful to the Councilmembers who have responded. MPD initially resisted our FOIA requests, requiring a hard fought lawsuit, and assistance from the DC Council⁵ to get these vital records. In the light of day, the data from those requests shows that of the 1,951 individuals deemed “gang members” or “gang associates,” in the DC Gang Database, MPD has no particularized reason to suspect them of criminal activity. Rather, the database criminalizes normal behavior, like congregating with friends, or visiting family members. Especially for Black residents of affordable or public housing in DC, being spotted associating with a suspected gang member or being seen at a gang meeting is enough to get listed on the database, with no data even purporting to show criminality.⁶ On the other hand, there was not a single member of any white supremacist group such as the Proud Boys on the DC Gang Database, demonstrating that it was both over inclusive of people of color and under-inclusive for obvious threats to our City.

The Database is a secretive list of 1,951 individuals (of whom 1,950 are people of color),⁷ riddled with inaccuracies. Under the pretext of violence prevention, the DC Gang Database targets and surveils individuals who would not be considered gang members under the DC Code. Under the DC Code, to be deemed a “gang” requires that a group of at least six individuals be actively involved in violent crime or bases its membership on the intent to commit crimes.⁸ Inclusion in the DC Gang Database requires neither, in clear contradiction of the law. The Gang Database is also in violation of federal guidelines, which require authorities to have a “reasonable suspicion of a crime” to qualify someone for a gang database.⁹

All that is required for inclusion in the DC Gang Database is applicability of one of eight vague and potentially-overlapping factors, which do not concern propensity for breaking the law, but rather personal associations and community ties with other individuals suspected of being gang members.¹⁰ Nearly 75% of all individuals (1,202) in the database are associated with only two criteria: being “observed associating with gang members” and being “observed attending gang meetings” (98% interrelation).¹¹ These weak, undefined criteria for inclusion endow MPD officers with nearly unfettered discretion to enter individuals in the database and subject them to potentially significant legal consequences, with no trial, no finding of guilt, nor even a probable

⁴ Hereinafter “DC Gang Database Report”, available at <https://www.washlaw.org/targeted-labeled-criminalized-early-findings-on-the-district-of-columbias-gang-database-2/>.

⁵ We wish to thank DC Councilmember Charles Allen for his assistance in drafting and submitting questions to the Metropolitan Police Department regarding the DC Gang Database in January 2022.

⁶ As of October 19, 2022, 83 percent (1,619) of those in the database were Black, 12 percent (288) were Latinx, and .05 percent (one) was White.

⁷ DC Gang Database Report, *supra*, at 4.

⁸ D.C. Code § 22-951.

⁹ 28 C.F.R. § 23.20.

¹⁰ DC Gang Database Report, *supra*, at 14 (citing February 3, 2022, Letter from MPD Chief Contee to Charles Allen. Page 8).

¹¹ *Id.* at 4.

cause determination. 99% of the “gangs” “identified” by the DC Gang Database are named after street corners or DC apartment complexes that do not necessarily correspond to any existing gangs.¹² Of the 1,951 tracked individuals in the database at time of analysis, 1,619 (83%) were Black; 288 (12%) were Latinx; and one individual was White (.05%).¹³ This racial disparity mirrors the geographic areas targeted for surveillance, with 70% of individuals included in the database living in zip codes of predominately Black and Latinx communities.¹⁴ This shows the dangerous consequences of MPD’s enormous discretion in executing this program, allowing unchecked surveillance over predominantly Black communities based on the unilateral judgment of law enforcement.

The DC Gang Database is unreliable, which does not help prevent crime and violence, and the stakes are enormous for the communities that are impacted by it. There can be significant detrimental impacts of being on the list, including in the criminal, youth services, and immigration systems. Compounding this disparate impact, the database’s data is shared with at least 22 outside entities that can use its unreliable information as a basis to deny employment or housing, expel or suspend students from school, or affect a person’s asylum status. This racialized surveillance not only does not prevent crime, it makes crime more likely by unfairly depriving the individuals it targets of the ability to thrive and meet their needs.

Among the detrimental effects of inclusion on the database is that it subjects individuals to further police harassment. For example, MPD officers are instructed that inclusion in the database alone, regardless of whether law enforcement has information to believe the individual is involved in a crime, provides reasonable suspicion to conduct a stop.¹⁵ If Secure DC goes into law in its current form, individuals deemed “gang associates” by MPD can be arrested on that basis of being on the Gang Database whenever they are within a drug free zone, as designated by MPD.¹⁶ Increased exposure to profiling by MPD can and does have life-and-death consequences. For example, the Report includes internal police documents in which supervisors questioned missing information justifying the inclusion of 18-year old Deon Kay on the Gang Database, prior to September 2, 2020, when he was fatally shot by an MPD officer.¹⁷ The Lieutenant wrote that Deon’s entry in the database “lacked the details to support the validation” and he threatened to “have the entire gang database purged and we are going to start over from scratch.”¹⁸ Inclusion on the Database can also serve as a basis for increased prison sentences,¹⁹ children being detained pre-trial,²⁰ student school expulsions,²¹ and even deportation and removal of

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 16.

¹⁵ *Id.* at 6.

¹⁶ B25-0345 "Secure DC Omnibus Amendment Act of 2024" at 18.

¹⁷ DC Gang Database Report, *supra*, at 29.

¹⁸ Steven Marcus v. District of Columbia, 21-CA-003709 B, FOIA Fourth Production, 10, page 235; Peter Hermann, *Study by civil rights group says D.C. police gang database is unreliable*, WASH. POST (Jan. 16, 2024), <https://www.washingtonpost.com/dc-md-va/2024/01/16/gang-data-police-dc/>.

¹⁹ DC Gang Database Report, *supra*, at 27, 28.

²⁰ *Id.*

²¹ *Id.* at 7.

individuals.²² Despite the significance of these consequences, there are no procedural safeguards to stem abuse or provide relief for impacted individuals. MPD does not inform individuals of their inclusion in the DC Gang Database; does not have a process for individuals to contest or appeal inclusion; and does not regularly review or purge faulty designations.²³

Furthermore, the inaccurate and damaging data contained in the database is widely available. More than 400 MPD employees have access to the data.²⁴ MPD also given access to or shared information from the database with at least 22 other agencies, including DC Public Schools, DC Youth and Rehabilitation Services, neighboring police departments in Maryland and Virginia, the FBI, the Secret Service, and federal immigration officials.²⁵ MPD's policies regarding the Gang Database have no restrictions on how outside agencies use or share the data.²⁶

MPD's mishandling of the Gang Database illustrates its disdain for transparency and inability to effectively address crime or protect DC residents. About two years ago, the number of suspected gang members on the list dropped from 3,687 to 1,951, including 500 juveniles.²⁷ The timing of the data purge coincided with the timing of the WLC's FOIA requests and increased media attention to the Gang Database.²⁸ Additionally, MPD vigorously resisted disclosing information about the Gang Database.²⁹ WLC and our partners were only able to procure the data for this report through extensive FOIA litigation and collaboration with DC Council Members.³⁰ It seems apparent that this massive purge came about because of the pressure from WLC and others for transparency about how the Database operates. MPD cannot be trusted not to abuse their authority and violate the rights of District residents.

Accordingly, the DC Council should pass legislation fully dismantling DC's Gang Database.

²² *Id.* at 36-44.

²³ DC Gang Database Report, *supra*, at 5 (citing February 3, 2022, Letter from MPD Chief Contee to Charles Allen, pp. 9-11).

²⁴ DC Gang Database Report, *supra*, at 21 (citing *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B, November 30, 2021, MPD response to Chicago Justice Project Freedom of Information Act Request. Page 3).

²⁵ DC Gang Database Report, *supra*, at 22.

²⁶ *Id.* at 20.

²⁷ *Id.* at 11.

²⁸ See Chris Gelardi, *DC's gang database highlights unconstitutional systems nationwide*, INTERCEPT (January 19, 2022), <https://theintercept.com/2022/01/09/dc-police-gang-database-mpd/>.

²⁹ *Chicago Justice Project v. District of Columbia*, 22-CA-00175 B (MPD failed to conduct an adequate search or produce several records requested beyond statutory timeframe, and then asserted improper exemptions to FOIA law in attempt to withhold responsive records); *Steven Marcus v. District of Columbia*, 21-CA-003709 B (MPD failed to conduct an adequate search or produce any of the records requested in violation on District FOIA law).

³⁰ Contee, Robert. "This letter is in response to your correspondence dated January 3, 2022, regarding the Metropolitan Police Department's (MPD) Gang Tracking and Analysis System." Letter to the Honorable Charles Allen, pp. 9-11. (February 3, 2022).

II. MPD's Approach to Preventing Crime and the Secure DC Omnibus Bill Make DC Less Safe.

The DC Gang Database illustrates starkly how MPD's current approach to preventing crime is both dangerous and ineffective. Strategies centered in over-policing and surveillance of entire Black and Brown communities cannot and will not prevent crime. The Secure DC omnibus legislation under consideration by the Council would bring back drug-free zones, further cementing MPD's racial profiling and discriminatory enforcement practices. The proposal reinstates³¹ the chief of MPD's authority to declare drug-free zones at her unilateral discretion, and create geographic enforcement areas in which ordinary civil rights and civil liberties are limited. The premise of the drug-free zones proposal will increase targeting of low-income Black and Brown people the same way that the DC Gang Database does, and will not stop violence or drug abuse.

Like the DC Gang Database, drug free zones give MPD an additional tool in its long history of harassing and targeting Black and Brown people. The drug free zones proposal would give MPD authority to criminalize gathering in particular areas based on weak and subjective criteria.³² Drug free zones will be declared in parts of the District that are most afflicted by poverty.³³ These include public and low-income housing complexes. Just as the DC Gang Database allows MPD to categorize Black and Brown folk who are congregating in or near these housing complexes as "gangs," drug free zones will allow MPD to designate these same individuals as potential criminals and compel them to disperse. The right to personal association is enshrined in the First Amendment and an individual should not be targeted simply for spending time with friends or family members.

Within a drug free zone, individuals can be ordered to disperse and arrested based solely on an MPD officer's reasonable belief that the individual is congregating for the purpose of committing a drug-related crime.³⁴ This means individuals who happen to be within MPD's drug free zones can be arrested for a lower standard than probable cause, which is ordinarily required under the Constitution.³⁵ We do not have to speculate about whether or not this policy would lead to pretextual stops and discriminatory enforcement by MPD; in 2014, the Council repealed these enforcement zones over concerns that they promoted racial and class-based profiling.³⁶ Meanwhile, the DC Gang Database makes clear that MPD is already using its powers to surveil and target DC residents who live and spend time in areas labeled "dangerous" by MPD. These

³¹ See D.C. Law 20-274, Repeal of Prostitution Free Zones and Drug Free Zones Amendment Act of 2014. https://lms.dccouncil.gov/downloads/LIMS/31535/Committee_Report/B20-0760-CommitteeReport1.pdf?Id=61014

³² Bill 25-0345, Committee Print (Jan. 17, 2024), at 86-90.

³³ COUNCIL OFFICE OF RACIAL EQUITY, *Racial Equity Impact Assessment, Secure DC Omnibus Amendment Act of 2024*, at 46 (Jan. 26, 2024).

³⁴ Bill 25-0345, Committee Print (Jan. 17, 2024), at 86-90.

³⁵ U.S. Const. amend. IV; D.C. Code § 23-581.

³⁶ Tim Craig, *D.C. 'prostitution-free zones' probably unconstitutional, attorney general's office says*, WASH. POST (Jan. 24, 2012), https://www.washingtonpost.com/local/dc-politics/districts-prostitution-free-zones-likely-unconstitutional-ags-office-says/2012/01/24/gIQAe3qNOQ_story.html.

enforcement practices do not relate to supposed criminality or threats to public safety, but tracking and maintaining control over those DC residents they deem “undesirable.”

The conduct which the Council aims to target with this provision – “open air drug markets” and other types of drug trafficking – are already illegal. The DC Code already authorizes MPD to apprehend people committing crimes in public, including unlawful public gatherings.³⁷ There is no indication that MPD’s failure to abate DC’s current rise in violence is due to lack of enforcement authority; more likely, this reflects the reality that increased police and criminal enforcement are not effective to reduce crime.³⁸ The Council should heed the lessons from DC’s mistakes of the 1990’s, decades since, and present day. Encampment clearings will not stop homelessness,³⁹ “prostitution free zones” did not stop sex trafficking,⁴⁰ and drug free zones will not stop drug abuse or violence.

III. The Council Must Invest in Evidence-Based Solutions To Prevent Crime Before It Occurs, And Divest From Ineffective Surveillance Tactics.

The facts are clear: violence is not on the rise because of people spending time together in public housing or predominantly Black neighborhoods. It is not on the rise because officers cannot view their body-worn camera footage before writing a report. And it is not on the rise because MPD is limited from hassling people without individualized suspicion. Permitting weak justifications for stops, arrests, and prosecution for petty crimes will only drive DC residents into poverty and the dangerous DC Jail. Insulating MPD with layers of protection from accountability to the public they serve will only decrease public trust, and further impede their ability to address crime.

Increased surveillance and expansion of police powers are not proven ways to bring peace to our streets. There are solutions, however, that can create safer communities:

- Pass legislation dismantling the DC Gang Database.
- Pass legislation prohibiting government surveillance based strictly on personal association or protected classes in accordance with the DC Human Rights Act.
- Implement the 2018 National Institute for Criminal Justice Reform’s District of Columbia Gun Violence Reduction Strategic Plan.⁴¹

³⁷ See D.C. Code §§ 23–581, 22–1321, 48–904.01.

³⁸ See, e.g., Don Stemen, *The Prison Paradox: More Incarceration Will Not Make Us Safer*, VERA INST. JUST. (July 2017), https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf.

³⁹ Aaron Howe & Sharon Clarke, *Repeating the same mistakes: Why encampment evictions do more harm than good*, STREET SENSE MEDIA (Jan. 11, 2023), <https://streetsensemedia.org/article/repeating-the-same-mistakes-why-encampment-evictions-do-more-harm-than-good/>.

⁴⁰ Tim Craig, *D.C. ‘prostitution-free zones’ probably unconstitutional, attorney general’s office says*, WASH. POST (Jan. 24, 2012), https://www.washingtonpost.com/local/dc-politics/districts-prostitution-free-zones-likely-unconstitutional-ags-office-says/2012/01/24/gIQAe3qNOQ_story.html.

⁴¹ Nat’l. Inst. Crim. Just. Reform, *Washington, DC Gun Violence Reduction Strategic Plan*, D.C. CRIM. JUST. COORDINATING COUNCIL 1 (Apr. 2022), https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/page_content/attachments/DC%20Violence%20Reduction%20Strategic%20Plan%20-%20April%202022.pdf

- Invest in more violence interrupters.
- Continue to fund robust anti-poverty programs.
- Invest in unarmed civilian investigators to investigate property crimes.

We agree that urgent action is needed to end this crisis and restore a sense of safety and security in our city. However, the District cannot police or incarcerate its way to stability; as long as poverty, gross racial inequities, and police violence persist, crime will as well.⁴² 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, including the DC Gang Database. 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 for the benefit of officer recruitment or public safety, and we are grateful that the current version of Secure DC leaves most of these important reforms untouched. By instead passing legislation that targets the root causes of violence and drug addiction, the Council would show that it values the life and dignity of every individual in every part of DC.

⁴² Alexi Jones & Wendy Sawyer, *Arrest, Release, Repeat: How Police and Jails are Misused to Respond to Social Problems*, Prison Pol’y Initiative (Aug. 2019), <https://www.prisonpolicy.org/reports/repeatarrests.html>.