

COUNCIL OF THE DISTRICT OF COLUMBIA
Office of the Budget Director



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FISCAL IMPACT STATEMENT

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

FROM: Jennifer Budoff - Budget Director

DATE: June 9, 2020

SHORT TITLE: Comprehensive Policing and Justice Reform Emergency Amendment Act of 2020

TYPE: Emergency

REQUESTING OFFICE: Councilmember Charles Allen

Conclusion

Funds are sufficient in the District's Fiscal Year 2020 budget and financial plan to implement the Comprehensive Policing and Justice Reform Emergency Amendment Act of 2020 and its corresponding temporary measure. Each subtitle is summarized below with a discussion of the costs, if any.

Background

This emergency measure includes 15 provisions separated into two titles.

Title I: Improving Police Accountability and Transparency

1. **Subtitle A** (section 101) prohibits the use of neck restraints.¹ The law currently prohibits trachea holds (also known as "arm bar hold" or "bar-arm hold"), but allows carotid artery holds (also known as "sleeper hold" or "v hold") in certain circumstances.² Willful and intentional violations of the current law can result in a fine of \$5,000, or imprisonment not exceeding 1 year, or both, and removal from office.³ The law also states that failure to provide immediate appropriate medical aid in certain circumstances creates a presumption of willful negligence and reckless disregard for the purposes of civil liability.⁴

¹ By amending the Limitation on the Use of the Chokehold Act of 1985, effective January 25, 1986 (D.C. Law 6-77; D.C. Official Code § 5-125.01 *et seq.*).

² D.C. Official Code § 5-125.03(a).

³ D.C. Official Code § 5-125.03(c).

⁴ D.C. Official Code § 5-125.03(b).

Subtitle A makes several changes to this law. Specifically, it updates and expands the Council’s findings and intent to ban the use of neck restraints by law enforcement and special police officers; defines “neck restraint” and repeals definitions for “trachea hold” and “carotid artery hold;” makes unlawful the use of neck restraints by any law enforcement officers or special police officer; makes unlawful the failure by an officer who applies a neck restraint or officers who observe such an incident to render first aid or to immediately request EMS services; and sets the criminal penalty for violations as up to a \$25,000 fine, incarceration up to 10 years, or both. **There is no cost to implementing this subtitle.**

2. **Subtitle B** (sections 102 and 103) expands access to body-worn camera (BWC) video recordings.⁵ Currently, BWC regulations allow Metropolitan Police Department (MPD) officers to review their BWC recordings or BWC recordings that have been shared with them to assist in initial report writing, except in cases involving a police shooting.⁶ Regulations also authorize the Mayor to release BWC recordings that would otherwise not be releasable pursuant to a FOIA request, on a case-by-case basis in matters of significant public interest and after certain consultations.⁷ Current regulations also require MPD to provide unredacted BWC recordings, upon request, to the Council committee with oversight of MPD, but do not specify a time frame.

Subtitle B makes several changes to these regulations. Specifically, it prohibits MPD officers from reviewing their BWC recordings and BWC recordings that have been shared with them to assist in writing initial reports; requires the Mayor, within 72 hours after the incident, to release the names and BWC recordings of all officers who have committed an officer-involved death or serious use of force; requires the Mayor, by July 1, 2020, to publicly release the names and BWC recordings of all officers who have committed an officer-involved death since the BWC Program was created; requires MPD to preserve BWC recordings related to a request from or an investigation by the Chair of the Council committee of jurisdiction; requires MPD to provide the unredacted BWC recording, upon request from the Chair of the Council committee of jurisdiction, within 72 hours after a request is made; and defines the phrase “serious use of force.”

Subtitle B also amends the D.C. Official Code to codify several of the above provisions.⁸ Specifically, the subtitle amends the Code to include the provisions related to releasing BWC recordings to the Chair of the Council committee of jurisdiction; releasing the names and BWC recordings of all officers who have committed an officer-involved death or serious use of force; and releasing the names and BWC recordings of all officers who have committed an officer-involved death since the BWC Program was created. Subtitle B also requires the biannual reporting on BWC to include the results of internal investigation, including any discipline involved. **There is no cost to implementing this subtitle.**

⁵ By amending Chapter 39 of Title 24 of the District of Columbia Municipal Regulations.

⁶ 24 DCMR § 3900.9.

⁷ 24 DCMR § 3900.10.

⁸ By amending the Body-Worn Camera Regulation and Reporting Requirements Act of 2015, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 5-116.33).

3. **Subtitle C** (section 104) makes changes related to the Office of Police Complaints (OPC), and its governing body, the Police Complaints Board (Board).⁹ OPC provides civilian oversight of law enforcement. The subtitle eliminates the reservation of a Board seat for a member of the MPD, following the expiration of the term of the currently serving MPD member. It expands the Board from five to nine members, with one member from each of the District's eight wards and one at-large member, and requires that all Board members be unaffiliated with law enforcement.¹⁰ It also expands the authority of the OPC Executive Director to investigate other evidence of abuse or misuse of police powers that is discovered while investigating a complaint, even if the complainant did not allege that particular abuse or misuse. This expanded authority includes circumstances where an officer failed to intervene or subsequently report any type of misconduct or use of force the officer observed or participated in. **There is no cost to implementing this subtitle.**
4. **Subtitle D** (sections 105 and 106) codifies the Use of Force Review Board (UFRB), which currently exists only by MPD General Order, and expands its voting membership from seven to 13 members.¹¹ The UFRB focuses on serious use of force investigations and may recommend corrective or adverse action for any case.¹² Currently, the seven voting members of the UFRB are all members of the MPD; the two nonvoting members are the OPC Executive Director and one member selected by the Fraternal Order of Police.¹³ The subtitle expands the UFRB voting membership to make the Executive Director of the OPC a voting member and expands the voting membership to include five civilian members. Three shall be Council-approved Mayoral appointees who meet certain qualifications and have no current or prior affiliation with law enforcement: one who has personally experienced the use of force by a law enforcement officer, one member of the DC Bar in good standing, and one community member. The remaining two civilian members shall be Council appointees with no current or prior affiliation with law enforcement: one with subject matter expertise in criminal justice policy and one with subject matter expertise in law enforcement oversight and the use of force. The subtitle also authorizes the Mayor to include nonvoting members at the Mayor's discretion. Section 106 makes a conforming amendment to the list of Mayoral appointees that require Council approval. **There is no cost to implementing this subtitle.**
5. **Subtitle E** (sections 107 and 108) repeals section 4 of the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982, which prohibited persons over the age of 16 from wearing any mask, hood, or device to conceal the person's identity while on any street or on public property with certain intent.¹⁴ It also makes conforming amendments to remove references to the repealed section. **There is no cost to implementing this subtitle.**
6. **Subtitle F** (section 109) places limitations on searches based solely on the subject's consent to that search. With some exceptions, the subtitle requires sworn members of District government law enforcement agencies to explain that the subject is being asked to consent; advise the subject that they have a legal right to decline and that the search will not be

⁹ By amending the Office of Citizen Complaint Review Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1101 *et seq.*).

¹⁰ D.C. Official Code § 5-1104(a).

¹¹ Established by MPD General Order 901.09; available online at https://go.mpdconline.com/GO/GO_901_09.pdf.

¹² MPD General Order 901-09.

¹³ *Id.*

¹⁴ D.C. Law 4-203 (D.C. Official Code § 22-3312.03), effective March 10, 1983.

conducted if they refuse to provide consent; obtain consent without threats or promises; confirm the subject understands, and use interpretation services if the subject is deaf or hard of hearing or cannot adequately understand or express themselves in spoken or written English. The subtitle prohibits the sworn member from conducting such a search without consent. The subtitle also provides exceptions to these requirements where a search is executed pursuant to a warrant or conducted pursuant to an applicable exception to the warrant requirement. The subtitle also provides that an officer's failure to comply with these requirements shall be considered by Superior Court in determining the voluntariness of the consent in circumstances where a defendant moves to suppress any evidence obtained in the course of a search; and that if the warning requirements of this subtitle are not captured on BWC or provided in writing, a presumption shall exist that the search was nonconsensual. **There is no cost to implementing this subtitle.**

7. **Subtitle G** (section 110) mandates continuing education and reconstitutes the Police Officers Standards and Training Board.¹⁵ Currently, MPD is required to provide its sworn members a minimum of 32 hours of continuing education per year, which must include instruction on certain topics. Subtitle G expands those topics to include racism and white supremacy, limiting the use of force, de-escalation tactics, and the changes within this bill: the prohibition on the use of neck restraints; obtaining consent from subjects of police consent searches; and the duty to report and information on how to report suspected misconduct by another law enforcement official or MPD officer.

Subtitle G also makes changes to the membership and duties of the Police Officers Standards and Training Board (POST Board). Among other duties, the POST Board establishes minimum application and appointment criteria for MPD officers and determines minimum requirements for the initial training program for recruits and the minimum requirements for MPD continuing education program. The subtitle expands the POST Board from 11 to 15 voting members and includes the OPC Executive Director as a voting member. It also increases the community representatives appointed by the Mayor from two to five persons and requires that the representatives have among them expertise in law enforcement oversight; juvenile justice reform; criminal defense; gender-based violence or LGBTQ social services, policy or advocacy; and violence prevention or intervention. The subtitle also requires the POST Board to meet by September 1, 2020. Finally, subtitle G adds an additional requirement to the minimum application and appointment criteria for the MPD: if the applicant has prior service with another law enforcement or public safety agency, the application information must include any alleged or sustained misconduct or discipline imposed by that prior employer. **There is no cost to implementing this subtitle.**

8. **Subtitle H** (section 111) expands the requirements for identification of MPD officers during First Amendment assemblies to include prominently indicating the local law enforcement affiliation on the uniforms and helmets of officers policing the assembly. **There is no cost to implementing this subtitle.**
9. **Subtitle I** (section 112) extends the right for a defendant to demand a jury trial in instances where the alleged victim is a law enforcement officer and the defendant is charged with

¹⁵ By amending the Metropolitan Police Department Application, Appointment, and Training Requirements of 2000, effective October 4, 2000 (D.C. Law 13-160; D.C. Official Code § 5-107.01 *et seq.*)

assault or threatened assault in a menacing matter (also known as “simple assault”); resisting arrest; or threats to do bodily harm. **There is no cost to implementing this subtitle.**

10. **Subtitle J** (section 113) repeals the law that criminalizes a police officer’s failure to arrest for an offense against the laws of the United States that is committed in the officer’s presence. Currently, the failure to arrest in such a circumstance is a misdemeanor, punishable by imprisonment up to 2 years or by a fine up to \$500. **There is no cost to implementing this subtitle.**
11. **Subtitle K** (sections 114 and 115) extends the time for corrective or adverse action against any sworn member or civilian employee of MPD in cases that involve the serious use of force or indicated potential criminal conduct.¹⁶ Under current law, except in instances under investigation where the time period is tolled, no corrective or adverse action can be commenced more than 90 days (not including Saturdays, Sundays, or legal holidays) after the date that MPD had notice of the act or occurrence allegedly constituting cause. Subtitle E extends the time before which MPD must bring corrective or adverse action from 90 to 180 days in cases involving the serious use of force or indicating potential criminal conduct. Section 115 repeals a provision in the DCMR that allows the Chief of Police to either confirm the Police Trial Board’s finding and impose the penalty recommended, reduce the penalty, or declare the board’s proceedings void and refer the case to another regularly appointed trial board. **There is no cost to implementing this subtitle.**
12. **Subtitle L** (section 116) establishes definitions, standards, and other parameters for use of force by law enforcement officers. It prohibits a law enforcement officer from using force, including non-deadly force,¹⁷ against a person unless there is probable cause to believe that the person committed a crime, the force is used to prevent escape from lawful custody or the commission of a crime, and the officer uses no more force than is reasonably necessary to effectuate the arrest or obtain compliance. The subtitle prohibits an officer from using deadly force¹⁸ against a person unless the officer believes it is immediately necessary to protect the officer or others from the threat of serious bodily injury or death, that belief and action are reasonable given the totality of the circumstances, and all other options have been exhausted or do not reasonably lend themselves to the circumstances. The subtitle also directs the trier of fact to consider the totality of the circumstances in its determination of reasonableness, including whether the officer engaged in de-escalation measures, among other specific elements. **There is no cost to implementing this subtitle.**
13. **Subtitle M** (section 117) prohibits District law enforcement agencies from acquiring certain ammunition and weapons through any program operated by the federal government, including ammunition or firearms of .50 caliber or higher, armed or armored aircraft or vehicles, bayonets, explosive or pyrotechnics, firearm mufflers or silencers, any object

¹⁶ By amending the Omnibus Public Safety Agency Reform Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-194; D.C. Official Code § 5-1031).

¹⁷ Defined as “any use of force that is not likely or intended to create a substantial risk of serious bodily injury or death.”

¹⁸ Defined as “any force likely or to intended to create a substantial risk of serious bodily injury or death.”

designed to or capable of launching explosives or pyrotechnics, and remotely piloted powered aircraft. The subtitle also requires that any agency in possession of any of the listed property dispose it within 180 days after the effective date of this act and includes reporting requirements related to the acquisition of any property through a program operated by the federal government. **There is no cost to implementing this subtitle.**

TITLE II: Building Safe and Just Communities

14. **Subtitle A** (sections 201 and 202) restores the ability to vote to some persons currently incarcerated for a felony and requires the Board of Elections to provide those persons with a voter registration form, a voter guide, and an absentee ballot for the November 3, 2020 General Election.¹⁹ Current law states that a person is ineligible to vote if they currently are incarcerated for a crime that is a felony in the District. Subtitle B states that for the purposes of voter eligibility, this will not apply to an individual convicted of a felony who is currently in the custody of the Department of Corrections (DOC). This would include individuals who are awaiting transfer to the Bureau of Prisons (BOP), who have returned from BOP for transitional living prior to release, who have returned from BOP for sentencing review, or are part of a population housed at DOC under contract with BOP. The number of people eligible under this change varies regularly. Section 2020 requires DOC to notify eligible individuals in its care of their voting rights within 10 business days after the effective date of this act. **There is no cost to implementing this subtitle.**
15. **Subtitle B** (section 203) requires the DOC, in its capacity as a BOP contracting facility, to identify and evaluate individuals in DOC's care who legally would be eligible for transition to home confinement, pursuant to 18 U.S.C. § 3624(c)(2) and applicable guidance, and to make recommendations to BOP regarding transition.²⁰ The subtitle also requires DOC to provide the names of the individuals identified and evaluated, as well as the outcomes of the evaluations and any transitions, to the Council committee with jurisdiction over DOC. **There is no cost to implementing this subtitle.**

¹⁹ By amending the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 669; D.C. Official Code § 1-1001.01 *et seq.*).

²⁰ By amending An Act To create a Department of Corrections in the District of Columbia, approved June 27, 1946 (60 Stat. 320; D.C. Official Code § 24-211.02(b)).