

# ENROLLMENT(S)

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# COUNCIL OF THE DISTRICT OF COLUMBIA

## NOTICE

### D.C. LAW 12-208

#### "Office of Citizen Complaint Review Establishment Act of 1998"

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P.L. 93-198 "the Act", the Council of the District of Columbia adopted Bill No. 12-521, on first and second readings, July 7, 1998 and September 22, 1998, respectively. Following the signature of the Mayor on October 16, 1998, pursuant to Section 404(e) of "the Act", and was assigned Act No. 12-495 and published in the November 20, 1998, edition of the D.C. Register (Vol. 45 page 8107) and transmitted to Congress on January 29, 1999 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 12-208, effective March 26, 1999.



LINDA W CROPP  
Chairman of the Council

#### Dates Counted During the 30-day Congressional Review Period:

Feb. 2,3,4,8,9,10,11,12,22,23,24,25

Mar. 1,2,3,4,5,8,9,10,11,15,16,17,18,19,22,23,24,25

AN ACT

D.C. ACT 12-495

*Codification  
District of  
Columbia  
Code  
1999 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

OCTOBER 16, 1998

To establish an independent Office of Citizen Complaint Review for the District of Columbia to review citizen complaints of alleged police misconduct involving harassment, use of unnecessary or excessive force, use of language or conduct that is insulting, demeaning or humiliating, discriminatory treatment, or retaliation against a person for filing a complaint against a member of the Metropolitan Police Department.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Office of Citizen Complaint Review Establishment Act of 1998".

**New Chapter  
9A,  
Title 4**

Sec. 2. Findings.

**New Section  
4-911**

The Council of the District of Columbia finds that:

- (1) The District of Columbia delegated to the Metropolitan Police Department ("MPD") the vital task of protecting the safety of persons and property in the District of Columbia. This task is difficult, dangerous, and sensitive.
- (2) Most members of the MPD perform their duties with diligence, devotion, and sensitivity. From time to time, however, some members of the MPD do not act in accordance with the high standards of conduct that the people of the District of Columbia have a right to expect. On other occasions, honest misunderstandings arise between police officers and members of the public with whom they interact.
- (3) Because police officers have been given extraordinary powers, it is essential that there be an effective and efficient system for reviewing their exercise of police powers. Further, it is essential that both police officers and members of the public have confidence that this system of review is fair and unbiased. Members of the public must be aware of this system and have easy access to its processes.
- (4) The need for independent review of police activities is recognized across the nation. Effective independent review enhances communication and mutual understanding between the police and the community, reduces community tensions, deters police misconduct, and increases the public's confidence in their police force.

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(5) Some complaints against police officers involve serious charges requiring formal disciplinary proceedings. Many, though, can be resolved through conciliation, mediation, or other dispute resolution techniques. An effective and efficient review mechanism should encompass a variety of procedures for dealing with different complaints in an appropriate manner.

**Sec. 3. Purpose.**

**New Section  
4-912**

The purpose of this act is to establish an effective, efficient, and fair system of independent review of citizen complaints against police officers in the District of Columbia, which will:

- (1) Be visible to and easily accessible to the public;
- (2) Investigate promptly and thoroughly claims of police misconduct;
- (3) Encourage the mutually agreeable resolution of complaints through conciliation and mediation where appropriate;
- (4) Provide adequate due process protection to officers accused of misconduct;
- (5) Provide fair and speedy determination of cases that cannot be resolved through conciliation or mediation;
- (6) Render just determinations;
- (7) Foster increased communication and understanding and reduce tension between the police and the public; and
- (8) Improve the public safety and welfare of all persons in the District of Columbia.

**Sec. 4. Definitions.**

**New Section  
4-913**

For purposes of this act, the term:

- (1) "Board" means the Citizen Complaint Review Board.
- (2) "Complaint examiner" means the person designated by the Executive Director to determine the merits of a complaint.
- (3) "Executive Director" means the head of the Office of Citizen Complaint Review.
- (4) "Office" means the Office of Citizen Complaint Review.

**Sec. 5. Citizen Complaint Review Board.**

**New Section  
4-914**

(a) There is established a Citizen Complaint Review Board ("Board"). The Board shall be composed of 5 members, 1 of whom shall be a member of the MPD, and 4 of whom shall have no current affiliation with any law enforcement agency. All members of the Board shall be residents of the District of Columbia. The members of the Board shall be appointed by the Mayor, subject to confirmation by the Council. The Mayor shall submit a nomination to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days

of Council recess. If the Council does not approve or disapprove a nomination by resolution within this 30-day period of review, the nomination shall be deemed disapproved.

(b) Board members first appointed after the effective date of this act shall serve as follows: 2 shall serve for a 3-year term; 2 shall serve for a 2-year term; and 1 shall serve for a 1-year term. Thereafter, Board members shall serve for a term of 3 years from the date of appointment to a full term or until a successor has been appointed. All board members shall serve without compensation. A Board member may be reappointed. The Mayor shall designate the chairperson of the Board, and may remove a member of the Board from office for cause. A person appointed to fill a vacancy on the Board occurring prior to the expiration of a term shall serve for the remainder of the term or until a successor has been appointed.

(c) A quorum for the transaction of business shall be 3 members of the Board.

(d) The Board shall conduct periodic reviews of the citizen complaint review process, and shall make recommendations, where appropriate, to the Mayor, the Council, the Financial Responsibility and Management Assistance Authority, and the Chief of the Metropolitan Police Department ("Police Chief") concerning the status and the improvement of the citizen complaint process. The Board shall, where appropriate, make recommendations to the above-named entities concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers.

(e) Within 60 days of the end of each fiscal year, the Board shall transmit to the entities named in subsection (d) of this section an annual report of the operations of the Board and the Office of Citizen Complaint Review.

(f) The Board is authorized to apply for and receive grants to fund its program activities in accordance with laws and regulations relating to grant management.

**Sec. 6. Office of Citizen Complaint Review establishment; appointment of Executive Director.**

**New Section  
4-915**

(a) There is established an Office of Citizen Complaint Review ("Office").

(b) The Office shall be headed by an Executive Director. The Executive Director shall be an attorney who is an active member in good standing of the District of Columbia Bar. The Board shall appoint the Executive Director to serve for a term of 3 years, or until a successor is appointed. An Executive Director may be reappointed. The Board may remove the Executive Director from office for cause. The Executive Director shall receive such compensation as is established by the Board.

**Sec. 7. Duties of the Executive Director.**

**New Section  
4-916**

(a) The Executive Director shall employ qualified persons or utilize the services of qualified volunteers, as necessary, to perform the work of the Office, including the investigation of complaints. The Executive Director may employ persons on a full-time or part-time basis, or

retain the services of contractors for the purpose of resolving a particular case or cases, as may be determined by the Executive Director, except that complaint investigators may not be persons currently or formerly employed by the MPD. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-601.1 *et seq.*) ("Personnel Act"), shall apply to the Executive Director and other employees of the Office.

(b) The Executive Director shall supervise all employees and volunteers of the Office, and shall ensure that all rules, regulations, and orders are carried out properly, and that all records of the Office are maintained properly.

(c) Subject to approval of the Board, the Executive Director shall establish a pool of qualified persons who shall be assigned by the Executive Director to carry out the mediation and complaint determination functions set forth in this act. In selecting a person to be a member of this pool, the Executive Director shall take into consideration each person's education, work experience, competence to perform the functions required of a dispute mediator or complaint hearing examiner, and general reputation for competence, impartiality, and integrity in the discharge of his responsibilities. No member of the pool shall be a current or former employee of the MPD. For their services, the members of this pool shall be entitled to such compensation as the Executive Director, with the approval of the Board, shall determine, provided that the compensation shall be on a per-case basis, not a per-hour, basis.

(d) The Board shall have the authority to promulgate rules to implement the provisions of this act. Such rules shall be promulgated in accordance with title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*), and shall be subject to review and approval by the Board before becoming effective.

Sec. 8. Authority of the Office and processing of complaint.

New Section  
4-917

(a) The Office shall have the authority to receive and to dismiss, conciliate, mediate, or adjudicate a citizen complaint against a member or members of the MPD that alleges abuse or misuse of police powers by such member or members, including:

- (1) Harassment;
- (2) Use of unnecessary or excessive force;
- (3) Use of language or conduct that is insulting, demeaning, or humiliating;
- (4) Discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business; or
- (5) Retaliation against a person for filing a complaint pursuant to this act.

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(b) If a complaint alleges misconduct that is not within the authority of the Office to review, the Executive Director shall refer the allegation to the Police Chief for further processing by the MPD, as appropriate.

(c) Any individual having personal knowledge of alleged police misconduct may file a complaint with the Office on behalf of a victim.

(d) To be timely, a complaint must be received by the Office within 45 days from the date of the incident that is the subject of the complaint. The Executive Director may extend the deadline for good cause.

(e) Each complaint shall be reduced to writing and signed by the complainant.

(f) Complaint forms shall conclude with the following words: "I hereby certify that to the best of my knowledge, and under penalty of perjury, the statements made herein are true."

(g) The Executive Director shall screen each complaint and may request additional information from the complainant. Within 7 working days of the receipt of the complaint, or within 7 working days of the receipt of additional information requested from the complainant, the Executive Director shall take 1 of the following actions:

- (1) Dismiss the complaint, with the concurrence of 1 member of the Board;
- (2) Refer the complaint to the United States Attorney for the District of Columbia for possible criminal prosecution;
- (3) Attempt to conciliate the complaint;
- (4) Refer the complaint to mediation; or
- (5) Refer the complaint for investigation.

(h) The Executive Director shall notify in writing the complainant and the subject police officer or officers of the action taken under subsection (g) of this section. If the complaint is dismissed, the notice shall be accompanied by a brief statement of the reasons for the dismissal, and the Executive Director shall notify the complainant that the complaint may be brought to the attention of the Police Chief who may direct that the complaint be investigated and that appropriate action be taken.

(i) For purposes of section 1601 of the Personnel Act, the receipt by the Office of an oral or written complaint shall not constitute knowledge or cause to know of acts, occurrences, or allegations contained in such complaint. For purposes of section 1601 of the Personnel Act, the MPD shall be deemed to know or have cause to know of the acts, occurrences, or allegations in a complaint received by the Office at the time the MPD receives written notice from the Office that an allegation in a complaint processed by the Office has been sustained.

**Sec. 9. Dismissal of complaint.**

A complaint may be dismissed on the following grounds:

- (1) The complaint is deemed to lack merit;
- (2) The complainant refuses to cooperate with the investigation; or

**New Section  
4-918**

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(3) If, after the Executive Director refers a complaint for mediation, the complainant willfully fails to participate in good faith in the mediation process.

**Sec. 10. Referral of complaint to the United States Attorney.**

**New Section  
4-919**

(a) When, in the determination of the Executive Director, there is reason to believe that the misconduct alleged in a complaint or disclosed by an investigation of the complaint may be criminal in nature, the Executive Director shall refer the matter to the United States Attorney for the District of Columbia for possible criminal prosecution. The referral shall be accompanied by a copy of all of the Office's files relevant to the matter being referred.

(b) The Executive Director shall give written notification of such referral to the Police Chief, the complainant, and the subject officer or officers. The receipt of notification by the Police Chief that a matter has been referred to the United States Attorney for the District of Columbia shall not constitute knowledge or cause to know of acts, occurrences, or allegations contained in such referral for purposes of section 1601 of the Personnel Act.

(c) The Executive Director shall maintain a record of each referral, and ascertain and record the disposition of each matter referred to the United States Attorney.

(d) If the United States Attorney declines in writing to prosecute, the Office shall resume its processing of the complaint, and thereafter the Executive Director may dismiss the complaint in accordance with the sections 8 and 9, conciliate the complaint, refer the complaint to mediation, or refer the complaint for investigation, as appropriate.

**Sec. 11. Conciliation and mediation.**

**New Section  
4-920**

(a) If deemed appropriate by the Executive Director, and if the parties agree to participate in a conciliation process, the Executive Director may attempt to resolve a complaint by conciliation.

(b)(1) The conciliation of a complaint shall be evidenced by a written agreement signed by the Executive Director and the parties which may provide for oral apologies or assurances, written undertakings, or any other terms satisfactory to the parties. No oral or written statements made in conciliation proceedings may be used as a basis for any discipline or recommended discipline against a subject police officer or officers or in any civil or criminal litigation.

(2) The parties may agree in writing that a written conciliation agreement shall not be a public document and shall not be available to the public, as would normally be required pursuant to the Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96; D.C. Code § 1-1521 *et seq.*).



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(c) If conciliation efforts are unsuccessful, the Executive Director may dismiss the complaint in accordance with sections 8 and 9, refer the complaint to mediation, or refer the complaint for investigation.

(d) If the Executive Director refers the complaint to mediation, the Executive Director shall assign the matter to a member of the pool who is experienced in mediation, shall schedule an initial mediation session for the earliest convenient time, and shall notify the complainant and subject police officer or officers in writing of the date, time, and location of the initial mediation session.

(e) The complainant, the subject police officer or officers, and the mediator shall be present at mediation sessions. Alternatively, the mediator may meet individually with the complainant and the subject police officer or officers. Except as provided in this subsection, no other person may be present or participate in mediation sessions, except as determined by the mediator to be required for a fair and expeditious mediation of the complaint. An interpreter shall be present when necessary for effective communication and shall be provided by the Office when timely requested by a party. When the complainant is under 18 years of age or is an adult who, because of mental, physical, or emotional condition or disability, cannot participate competently in mediation, a parent, guardian, conservator, or other responsible adult must be present at mediation sessions.

(f) The mediation process shall continue as long as the mediator believes it may result in the resolution of the complaint, except that it may not extend beyond 30 days from the date of the initial mediation session without the approval of the Executive Director. No oral or written statement made during the mediation process may be used by the Office or the MPD as a basis for any discipline or recommended discipline of the subject police officer or officers, nor in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.

(g) If mediation is successful, the mediator and the parties shall sign a mediation agreement resolving the complaint. The Executive Director shall place a copy of the mediation agreement in the complaint file and shall forward a copy of the mediation agreement to the Police Chief. The Police Chief shall monitor the conduct of the police officer or officers to determine that the police officer complies with the terms of an agreement reached after mediation.

(h) The parties may agree in writing that a mediation agreement shall not be a public document and shall not be available to the public, as would normally be required pursuant to the Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96; D.C. Code § 1-1521 *et seq.*).

(i) If mediation efforts are unsuccessful, the Executive Director may dismiss the complaint in accordance with sections 8 and 9, may refer the complaint for investigation, or may refer the complaint for adjudication if the Executive Director determines that further investigation is unnecessary.

(j) If, after the Executive Director refers a complaint to mediation, the complainant willfully fails to participate in good faith in the mediation process, the Executive Director may dismiss the complaint in accordance with sections 8 and 9, may refer the complaint for investigation, or may refer the complaint to a complaint examiner for adjudication of the merits of the complaint if the Executive Director determines that further investigation is unnecessary.

(k) If, after the Executive Director refers a complaint to mediation, any police officer subject to the complaint refuses to participate in the mediation process in good faith, such refusal or failure shall constitute cause for discipline by the Police Chief. The Police Chief shall cause appropriate disciplinary action to be instituted against the police officer for such a violation and shall notify the Executive Director of the outcome of such action. In the event that the subject police officer refuses to participate in the mediation process or fails to participate in the mediation process in good faith, the Executive Director shall refer the complaint for investigation, or may refer the complaint for adjudication if further investigation is deemed unnecessary.

**Sec. 12. Complaint investigation, findings, and determination.**

**New Section  
4-921**

(a) If the Executive Director refers a complaint for investigation, the Executive Director shall assign an investigator to investigate the complaint.

(b) If the complainant refuses to cooperate in the investigation, the Executive Director may dismiss the complaint in accordance with sections 8 and 9.

(c) The Executive Director is authorized to cause the issuance of subpoenas under the seal of the Superior Court of the District of Columbia compelling the complainant, the subject officer or officers, witnesses, and other persons to respond to written or oral questions, or to produce relevant documents or other evidence as may be necessary for the proper investigation and determination of a complaint. The service of any such subpoena on a subject police officer or any other employee of the MPD may be effected by service on the Police Chief or on his designee, who shall deliver the subpoena to the subject police officer or employee. The Police Chief or his designee shall transmit the return of service to the Office. Statements made pursuant to a subpoena shall be given under oath or affirmation.

(d) Employees of the MPD shall cooperate fully with the Office in the investigation and adjudication of a complaint. Upon notification by the Executive Director that an MPD employee has not cooperated as requested, the Police Chief shall cause appropriate disciplinary action to be instituted against the employee, and shall notify the Executive Director of the outcome of such action. An employee of the MPD shall not retaliate, directly or indirectly, against a person who files a complaint under this act. If a complaint of retaliation is sustained under this act, the subject police officer or employee shall be subject to appropriate penalty, including dismissal. Such disciplinary action shall not be taken with respect to an employee's invocation of the Fifth Amendment privilege against self-incrimination.

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(e) When the investigator completes the investigation, the investigator shall summarize the results of the investigation in an investigative report which, along with the investigative file, shall be transmitted to the Executive Director. After reviewing the investigative report and the investigative file, the Executive Director may dismiss the complaint in accordance with sections 8 and 9, may direct the investigator to undertake additional investigation, or may refer the complaint to a complaint examiner designated by the Executive Director to determine the merits of the complaint.

(f) Upon receiving a complaint, a complaint examiner may request that the Executive Director order additional investigation, may proceed to determine the merits of the complaint in a fair and expeditious manner based on the investigative report and the investigative file, or may hold an evidentiary hearing. If the complaint examiner determines that an evidentiary hearing is necessary to determine fairly the merits of a complaint, the testimony at such hearing shall be under oath or affirmation, and the parties may be represented by counsel. A complaint examiner shall have the authority to administer an oath or affirmation to a witness.

(g) If, after the Executive Director assigns a complaint to a complaint examiner, the parties indicate to the complaint examiner that they are willing to resolve the complaint through conciliation or mediation, the complaint examiner may act as a conciliator or mediator. If a party already is represented by counsel, that party may continue to be represented by counsel during this conciliation or mediation process. If one party is represented by counsel and the other party is not so represented, the complaint examiner shall, upon request, give the unrepresented party a reasonable time to obtain counsel before commencing the mediation or conciliation process. Any resulting written conciliation or mediation agreement may be confidential as provided in section 11(h), and neither any such agreement nor any oral nor written statement made by a party during the course of the conciliation or mediation process may be used as a basis for any discipline or recommended discipline of the subject police officer or officers or in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.

(h) Upon review of the investigative file and the evidence adduced at any evidentiary hearing, and in the absence of the resolution of the complaint by conciliation or mediation, the complaint examiner shall make written findings of fact regarding all material issues of fact, and shall determine whether the facts found sustain or do not sustain each allegation of misconduct. In making that determination, the complaint examiner may consider any MPD regulation, policy, or order that prescribes standards of conduct for police officers. For purposes of this act, these written findings of fact and determinations by the complaint examiner (collectively, the "merits determination") may not be rejected unless they clearly misapprehend the record before the complaint examiner and are not supported by substantial, reliable, and probative evidence in that record.

(i) If the complaint examiner determines that 1 or more allegations in the complaint is sustained, the Executive Director shall transmit the entire complaint file, including the merits

determination of the complaint examiner, to the Police Chief for appropriate action. If the complaint examiner determines that no allegation in the complaint is sustained, the Executive Director shall dismiss the complaint and notify the parties and the Police Chief in writing of such dismissal with a copy of the merits determination.

**Sec. 13. Action by the Metropolitan Police Department.**

**New Section  
4-922**

(a) Upon receipt of a complaint file in which 1 or more allegations in a complaint has been sustained, the Police Chief shall cause the file to be reviewed within 5 working days after receiving the complaint file. This review shall not be conducted by persons from the same organizational unit as the subject police officer or officers. All persons conducting the review shall be senior in grade or rank to the subject police officer or officers.

(b) The review of the complaint file shall include a review of the personnel file of the subject officer or officers, including any record of prior misconduct by the subject police officer or officers. Within 15 working days after receiving the complaint file from the Police Chief, the reviewing officers shall make a written recommendation, with supporting reasons, to the Police Chief regarding an appropriate penalty from the Table of Penalties Guide in General Order 1202.1 (Disciplinary Procedures and Processes). This recommendation may include a proposal for any additional action by the Police Chief not inconsistent with the intent and purpose of the citizen complaint review process.

(c) The review may include a proposal that the Police Chief return the merits determination to the Executive Director for review by a final review panel as set forth in subsection (g) of this section, if those charged with the review conclude, with supporting reasons, that, insofar as it sustains 1 or more allegations in the complaint, the merits determination clearly misapprehends the record before the complaint examiner and is not supported by substantial, reliable, and probative evidence in that record. The staff recommendation may not propose the supplementation of the evidentiary record before the complaint examiner.

(d) Within 5 working days after receiving the staff recommendation, the Police Chief shall notify the complainant and the subject police officer or officers in writing of the staff recommendation, and shall afford the complainant and the subject police officer or officers an opportunity to file with the Police Chief, within a reasonable time period set by the Police Chief, a written response to the staff recommendation. The Police Chief shall give full consideration to the written responses received from the complainant and the subject police officer or officers before taking final action with regard to the complaint.

(e) Within 15 working days after receiving the written responses of the complainant and the subject officer or officers, or within 15 working days of the deadline set for receipt of such responses, whichever is earlier, the Police Chief shall issue a decision as to the imposition of discipline upon the subject police officer or officers. The decision of the Police Chief shall be in writing and shall set forth a concise statement of the reasons therefor. The Police Chief may

not reject the merits determination, in whole or in part, unless the Police Chief concludes, with supporting reasons, that the merits determination clearly misapprehends the record before the complaint examiner and is not supported by substantial, reliable, and probative evidence in the record before the complaint examiner. The Police Chief may not supplement the evidentiary record.

(f) The Police Chief shall notify the Executive Director, the complainant, and the subject police officer or officers in writing of the action taken by the Police Chief, and shall include in such notice a copy of the decision.

(g) The decision of the Police Chief shall be a final decision with no further right of administrative review, other than as provided in section 15(f), except in the following circumstances:

(1) The Police Chief may reopen any closed matter in the interests of fairness and justice; or

(2) If the Police Chief concludes on the basis of a staff recommendation under subsection (c) of this section, or otherwise, that insofar as it sustains 1 or more allegations of the complaint, the merits determination clearly misapprehends the record before the complaint examiner, and is not supported by substantial, reliable, and probative evidence in the record, the Police Chief shall return the merits determination to the Executive Director for review by a final review panel comprised of 3 complaint examiners (not including the complaint examiner who prepared the merits determination) selected by the Executive Director. Upon review of the record, and without taking any additional evidence, the final review panel shall issue a written decision, with supporting reasons, regarding the correctness of the merits determination to the extent that the Police Chief has concluded that it erroneously sustained 1 or more allegations of the complaint. The final review panel shall uphold the merits determination as to any allegation of the complaint that the determination was sustained, unless the panel concludes that the determination regarding the allegation clearly misapprehends the record before the original complaint examiner and is not supported by substantial, reliable, and probative evidence in that record. A copy of the decision of the final review panel shall be transmitted to the Executive Director, the complainant, the subject police officer or officers, and the Police Chief.

(h) If the final review panel concludes that the merits determination sustaining 1 or more allegations of the complaint should be reversed in its entirety, the Executive Director shall dismiss the complaint, and notify the parties and the Police Chief in writing of such dismissal. If the final review panel concludes that the merits determination should be upheld as to any allegation of the complaint that the determination has sustained, the Police Chief, within 15 working days of receipt of the panel's decision, shall issue a supplemental decision as to the imposition of discipline upon the subject officer or officers that is fully consistent with the panel's decision. The supplemental decision of the Police Chief shall be in writing and shall set forth a concise statement of the reasons therefor. The Police Chief shall notify the Executive Director, the complainant, and the subject police officer or officers in writing of the action taken

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by the Police Chief, and shall include in such notice a copy of the supplemental decision. The supplemental decision of the Police Chief shall be a final decision with no further right of administrative review, other than as provided in sections 13(g) and 15(f).

**Sec. 14. Effect of order dismissing complaint.**

**New Section  
4-923**

(a) An order of the Executive Director dismissing a complaint shall be a final resolution of the complaint by the Office. Such order shall be neither appealable to nor reviewable by any other entity, administrative or judicial.

(b) An order of the Executive Director dismissing a complaint for any reason, including a dismissal based upon an adjudication of the merits of a complaint by a complaint examiner and a decision of a final review panel that reverses a merits determination of a complaint examiner, shall not bar the complainant from seeking any judicial relief that may be available pursuant to the statutory and common law of the District of Columbia.

**Sec. 15. Metropolitan Police Department disciplinary authority.**

**New Section  
4-924**

(a) The MPD shall have full authority, under the procedures established pursuant to section 1 of An Act Relating to the Metropolitan Police of the District of Columbia, approved February 28, 1901 (31 Stat. 819; D.C. Code § 4-118), to initiate disciplinary proceedings against an officer of the MPD with respect to a charge of misconduct within the scope of section 8 prior to the timely filing of a complaint with the Office.

(b) If the MPD has initiated disciplinary proceedings against an officer of the MPD for alleged misconduct, the subsequent timely filing with the Office of a complaint against the same officer or officers, alleging the same misconduct, shall not preclude the MPD from proceeding with its own disciplinary process. Nor shall the fact that the MPD has initiated disciplinary proceedings against a police officer for alleged misconduct preclude the Office from processing a complaint that was timely filed against the same officer and alleging the same misconduct, except that the Police Chief may not punish the same officer more than once for the same act or omission that constitutes misconduct.

(c) When the MPD has not initiated a disciplinary proceeding against a police officer prior to the timely filing of a complaint with the Office, the MPD shall not initiate a disciplinary proceeding against the subject police officer or officers with regard to misconduct alleged in such complaint until the Office disposes of the complaint.

(d) A merits determination by a complaint examiner, on the basis of an evidentiary hearing, that no allegation of misconduct in the complaint is sustained, as well as a decision of a final review panel that reverses in its entirety a merits determination that sustained 1 or more allegations of the complaint, precludes the MPD from imposing discipline on the subject police officer or officers with respect to any allegation of misconduct contained in the complaint.

(e) A merits determination by a complaint examiner, on the basis of an evidentiary hearing, or a later decision of a final review panel, if any, shall be binding on the subject police

officer or officers and on the Police Chief in all subsequent proceedings as to all essential facts determined and all violations found.

(f) If the complaint examiner has not held an evidentiary hearing and the Police Chief imposes termination as a disciplinary action, the affected police officer shall be entitled to a post-termination administrative proceeding as provided by law. A police officer disciplined by the Police Chief, whether by termination or otherwise, shall be entitled to whatever administrative disciplinary proceeding is afforded under any applicable collective bargaining agreement.

**Sec. 16. Funding and compensation.**

**New Section  
4-925**

(a) There are authorized such funds as may be necessary to support the Board and the Office.

(b) The establishment of the Board and the Office are dependent upon the availability of appropriated funds.

(c) Any entitlement to compensation under this act for services rendered shall be dependent upon the availability of appropriated funds to pay such compensation.

**Sec. 17. Fiscal impact statement.**

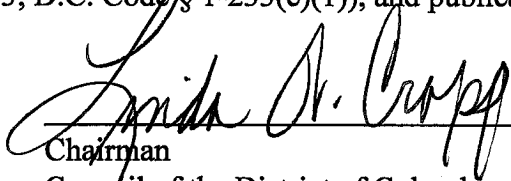
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

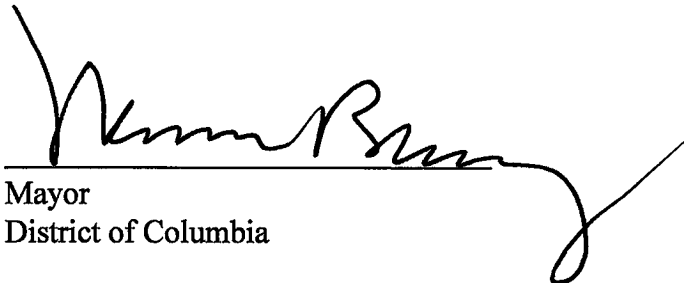
**Sec. 18. Effective date.**

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided

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in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

  
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Chairman  
Council of the District of Columbia

  
\_\_\_\_\_  
Mayor  
District of Columbia

APPROVED: October 16, 1998





COUNCIL OF THE DISTRICT OF COLUMBIA  
 COUNCIL PERIOD TWELVE  
 RECORD OF OFFICIAL COUNCIL VOTE

Docket No. \_\_\_\_\_

B12-521

ITEM ON CONSENT CALENDAR

ACTION & DATE \_\_\_\_\_

ADOPTED FIRST READING, 7-7-98  
 APPROVED

VOICE VOTE  
 RECORDED VOTE ON REQUEST

ABSENT \_\_\_\_\_

THOMAS

ROLL CALL VOTE - Result \_\_\_\_\_

| Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB |
|---------------|-----|-----|----|----|---------------|-----|-----|----|----|---------------|-----|-----|----|----|
| Chmn. Cropp   |     |     |    |    | Chavous       |     |     |    |    | Schwartz      |     |     |    |    |
| Allen         |     |     |    |    | Evans         |     |     |    |    | Smith, Jr.    |     |     |    |    |
| Ambrose       |     |     |    |    | Jarvis        |     |     |    |    | Thomas, Sr.   |     |     |    |    |
| Brazil        |     |     |    |    | Mason         |     |     |    |    |               |     |     |    |    |
| Catania       |     |     |    |    | Patterson     |     |     |    |    |               |     |     |    |    |

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

*Angie Jones*  
 Secretary to the Council

*September 30, 1998*  
 Date

ITEM ON CONSENT CALENDAR

ACTION & DATE \_\_\_\_\_

ADOPTED FINAL READING, 9-22-98

VOICE VOTE  
 RECORDED VOTE ON REQUEST

APPROVED

ABSENT \_\_\_\_\_

MASON

ROLL CALL VOTE - Result \_\_\_\_\_

| Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB |
|---------------|-----|-----|----|----|---------------|-----|-----|----|----|---------------|-----|-----|----|----|
| Chmn. Cropp   |     |     |    |    | Chavous       |     |     |    |    | Schwartz      |     |     |    |    |
| Allen         |     |     |    |    | Evans         |     |     |    |    | Smith, Jr.    |     |     |    |    |
| Ambrose       |     |     |    |    | Jarvis        |     |     |    |    | Thomas, Sr.   |     |     |    |    |
| Brazil        |     |     |    |    | Mason         |     |     |    |    |               |     |     |    |    |
| Catania       |     |     |    |    | Patterson     |     |     |    |    |               |     |     |    |    |

X - Indicates Vote

AB - Absent

NV - Present not voting

CERTIFICATION RECORD

*Angie Jones*  
 Secretary to the Council

*September 30, 1998*  
 Date

ITEM ON CONSENT CALENDAR

ACTION & DATE \_\_\_\_\_

VOICE VOTE  
 RECORDED VOTE ON REQUEST

ABSENT \_\_\_\_\_

ROLL CALL VOTE - Result \_\_\_\_\_

| Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB |
|---------------|-----|-----|----|----|---------------|-----|-----|----|----|---------------|-----|-----|----|----|
| Chmn. Cropp   |     |     |    |    | Chavous       |     |     |    |    | Schwartz      |     |     |    |    |
| Allen         |     |     |    |    | Evans         |     |     |    |    | Smith, Jr.    |     |     |    |    |
| Ambrose       |     |     |    |    | Jarvis        |     |     |    |    | Thomas, Sr.   |     |     |    |    |
| Brazil        |     |     |    |    | Mason         |     |     |    |    |               |     |     |    |    |
| Catania       |     |     |    |    | Patterson     |     |     |    |    |               |     |     |    |    |

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date

AN ACT

*Codification  
District of  
Columbia  
Code  
1999 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish an independent Office of Citizen Complaint Review for the District of Columbia to review citizen complaints of alleged police misconduct involving harassment, use of unnecessary or excessive force, use of language or conduct that is insulting, demeaning or humiliating, discriminatory treatment, or retaliation against a person for filing a complaint against a member of the Metropolitan Police Department.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Office of Citizen Complaint Review Establishment Act of 1998".

**New Chapter  
9A,  
Title 4**

**Sec. 2. Findings.**

**New Section  
4-911**

The Council of the District of Columbia finds that:

(1) The District of Columbia delegated to the Metropolitan Police Department ("MPD") the vital task of protecting the safety of persons and property in the District of Columbia. This task is difficult, dangerous, and sensitive.

(2) Most members of the MPD perform their duties with diligence, devotion, and sensitivity. From time to time, however, some members of the MPD do not act in accordance with the high standards of conduct that the people of the District of Columbia have a right to expect. On other occasions, honest misunderstandings arise between police officers and members of the public with whom they interact.

(3) Because police officers have been given extraordinary powers, it is essential that there be an effective and efficient system for reviewing their exercise of police powers. Further, it is essential that both police officers and members of the public have confidence that this system of review is fair and unbiased. Members of the public must be aware of this system and have easy access to its processes.

(4) The need for independent review of police activities is recognized across the nation. Effective independent review enhances communication and mutual understanding between the police and the community, reduces community tensions, deters police misconduct, and increases the public's confidence in their police force.

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(5) Some complaints against police officers involve serious charges requiring formal disciplinary proceedings. Many, though, can be resolved through conciliation, mediation, or other dispute resolution techniques. An effective and efficient review mechanism should encompass a variety of procedures for dealing with different complaints in an appropriate manner.

**Sec. 3. Purpose.**

**New Section  
4-912**

The purpose of this act is to establish an effective, efficient, and fair system of independent review of citizen complaints against police officers in the District of Columbia, which will:

- (1) Be visible to and easily accessible to the public;
- (2) Investigate promptly and thoroughly claims of police misconduct;
- (3) Encourage the mutually agreeable resolution of complaints through conciliation and mediation where appropriate;
- (4) Provide adequate due process protection to officers accused of misconduct;
- (5) Provide fair and speedy determination of cases that cannot be resolved through conciliation or mediation;
- (6) Render just determinations;
- (7) Foster increased communication and understanding and reduce tension between the police and the public; and
- (8) Improve the public safety and welfare of all persons in the District of Columbia.

**Sec. 4. Definitions.**

**New Section  
4-913**

For purposes of this act, the term:

- (1) "Board" means the Citizen Complaint Review Board.
- (2) "Complaint examiner" means the person designated by the Executive Director to determine the merits of a complaint.
- (3) "Executive Director" means the head of the Office of Citizen Complaint Review.
- (4) "Office" means the Office of Citizen Complaint Review.

**Sec. 5. Citizen Complaint Review Board.**

**New Section  
4-914**

(a) There is established a Citizen Complaint Review Board ("Board"). The Board shall be composed of 5 members, 1 of whom shall be a member of the MPD, and 4 of whom shall have no current affiliation with any law enforcement agency. All members of the Board shall be residents of the District of Columbia. The members of the Board shall be appointed by the Mayor, subject to confirmation by the Council. The Mayor shall submit a nomination to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days

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of Council recess. If the Council does not approve or disapprove a nomination by resolution within this 30-day period of review, the nomination shall be deemed disapproved.

(b) Board members first appointed after the effective date of this act shall serve as follows: 2 shall serve for a 3-year term; 2 shall serve for a 2-year term; and 1 shall serve for a 1-year term. Thereafter, Board members shall serve for a term of 3 years from the date of appointment to a full term or until a successor has been appointed. All board members shall serve without compensation. A Board member may be reappointed. The Mayor shall designate the chairperson of the Board, and may remove a member of the Board from office for cause. A person appointed to fill a vacancy on the Board occurring prior to the expiration of a term shall serve for the remainder of the term or until a successor has been appointed.

(c) A quorum for the transaction of business shall be 3 members of the Board.

(d) The Board shall conduct periodic reviews of the citizen complaint review process, and shall make recommendations, where appropriate, to the Mayor, the Council, the Financial Responsibility and Management Assistance Authority, and the Chief of the Metropolitan Police Department ("Police Chief") concerning the status and the improvement of the citizen complaint process. The Board shall, where appropriate, make recommendations to the above-named entities concerning those elements of management of the MPD affecting the incidence of police misconduct, such as the recruitment, training, evaluation, discipline, and supervision of police officers.

(e) Within 60 days of the end of each fiscal year, the Board shall transmit to the entities named in subsection (d) of this section an annual report of the operations of the Board and the Office of Citizen Complaint Review.

(f) The Board is authorized to apply for and receive grants to fund its program activities in accordance with laws and regulations relating to grant management.

**Sec. 6. Office of Citizen Complaint Review establishment; appointment of Executive Director.**

**New Section  
4-915**

(a) There is established an Office of Citizen Complaint Review ("Office").

(b) The Office shall be headed by an Executive Director. The Executive Director shall be an attorney who is an active member in good standing of the District of Columbia Bar. The Board shall appoint the Executive Director to serve for a term of 3 years, or until a successor is appointed. An Executive Director may be reappointed. The Board may remove the Executive Director from office for cause. The Executive Director shall receive such compensation as is established by the Board.

**Sec. 7. Duties of the Executive Director.**

**New Section  
4-916**

(a) The Executive Director shall employ qualified persons or utilize the services of qualified volunteers, as necessary, to perform the work of the Office, including the investigation of complaints. The Executive Director may employ persons on a full-time or part-time basis, or

retain the services of contractors for the purpose of resolving a particular case or cases, as may be determined by the Executive Director, except that complaint investigators may not be persons currently or formerly employed by the MPD. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Code § 1-601.1 *et seq.*) ("Personnel Act"), shall apply to the Executive Director and other employees of the Office.

(b) The Executive Director shall supervise all employees and volunteers of the Office, and shall ensure that all rules, regulations, and orders are carried out properly, and that all records of the Office are maintained properly.

(c) Subject to approval of the Board, the Executive Director shall establish a pool of qualified persons who shall be assigned by the Executive Director to carry out the mediation and complaint determination functions set forth in this act. In selecting a person to be a member of this pool, the Executive Director shall take into consideration each person's education, work experience, competence to perform the functions required of a dispute mediator or complaint hearing examiner, and general reputation for competence, impartiality, and integrity in the discharge of his responsibilities. No member of the pool shall be a current or former employee of the MPD. For their services, the members of this pool shall be entitled to such compensation as the Executive Director, with the approval of the Board, shall determine, provided that the compensation shall be on a per-case basis, not a per-hour, basis.

(d) The Board shall have the authority to promulgate rules to implement the provisions of this act. Such rules shall be promulgated in accordance with title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*), and shall be subject to review and approval by the Board before becoming effective.

Sec. 8. Authority of the Office and processing of complaint.

New Section  
4-917

(a) The Office shall have the authority to receive and to dismiss, conciliate, mediate, or adjudicate a citizen complaint against a member or members of the MPD that alleges abuse or misuse of police powers by such member or members, including:

- (1) Harassment;
- (2) Use of unnecessary or excessive force;
- (3) Use of language or conduct that is insulting, demeaning, or humiliating;
- (4) Discriminatory treatment based upon a person's race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, source of income, or place of residence or business; or
- (5) Retaliation against a person for filing a complaint pursuant to this act.

(b) If a complaint alleges misconduct that is not within the authority of the Office to review, the Executive Director shall refer the allegation to the Police Chief for further processing by the MPD, as appropriate.

(c) Any individual having personal knowledge of alleged police misconduct may file a complaint with the Office on behalf of a victim.

(d) To be timely, a complaint must be received by the Office within 45 days from the date of the incident that is the subject of the complaint. The Executive Director may extend the deadline for good cause.

(e) Each complaint shall be reduced to writing and signed by the complainant.

(f) Complaint forms shall conclude with the following words: "I hereby certify that to the best of my knowledge, and under penalty of perjury, the statements made herein are true.".

(g) The Executive Director shall screen each complaint and may request additional information from the complainant. Within 7 working days of the receipt of the complaint, or within 7 working days of the receipt of additional information requested from the complainant, the Executive Director shall take 1 of the following actions:

(1) Dismiss the complaint, with the concurrence of 1 member of the Board;

(2) Refer the complaint to the United States Attorney for the District of Columbia for possible criminal prosecution;

(3) Attempt to conciliate the complaint;

(4) Refer the complaint to mediation; or

(5) Refer the complaint for investigation.

(h) The Executive Director shall notify in writing the complainant and the subject police officer or officers of the action taken under subsection (g) of this section. If the complaint is dismissed, the notice shall be accompanied by a brief statement of the reasons for the dismissal, and the Executive Director shall notify the complainant that the complaint may be brought to the attention of the Police Chief who may direct that the complaint be investigated and that appropriate action be taken.

(i) For purposes of section 1601 of the Personnel Act, the receipt by the Office of an oral or written complaint shall not constitute knowledge or cause to know of acts, occurrences, or allegations contained in such complaint. For purposes of section 1601 of the Personnel Act, the MPD shall be deemed to know or have cause to know of the acts, occurrences, or allegations in a complaint received by the Office at the time the MPD receives written notice from the Office that an allegation in a complaint processed by the Office has been sustained.

#### **Sec. 9. Dismissal of complaint.**

A complaint may be dismissed on the following grounds:

(1) The complaint is deemed to lack merit;

(2) The complainant refuses to cooperate with the investigation; or

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(3) If, after the Executive Director refers a complaint for mediation, the complainant willfully fails to participate in good faith in the mediation process.

**Sec. 10. Referral of complaint to the United States Attorney.**

**New Section  
4-919**

(a) When, in the determination of the Executive Director, there is reason to believe that the misconduct alleged in a complaint or disclosed by an investigation of the complaint may be criminal in nature, the Executive Director shall refer the matter to the United States Attorney for the District of Columbia for possible criminal prosecution. The referral shall be accompanied by a copy of all of the Office's files relevant to the matter being referred.

(b) The Executive Director shall give written notification of such referral to the Police Chief, the complainant, and the subject officer or officers. The receipt of notification by the Police Chief that a matter has been referred to the United States Attorney for the District of Columbia shall not constitute knowledge or cause to know of acts, occurrences, or allegations contained in such referral for purposes of section 1601 of the Personnel Act.

(c) The Executive Director shall maintain a record of each referral, and ascertain and record the disposition of each matter referred to the United States Attorney.

(d) If the United States Attorney declines in writing to prosecute, the Office shall resume its processing of the complaint, and thereafter the Executive Director may dismiss the complaint in accordance with the sections 8 and 9, conciliate the complaint, refer the complaint to mediation, or refer the complaint for investigation, as appropriate.

**Sec. 11. Conciliation and mediation.**

**New Section  
4-920**

(a) If deemed appropriate by the Executive Director, and if the parties agree to participate in a conciliation process, the Executive Director may attempt to resolve a complaint by conciliation.

(b)(1) The conciliation of a complaint shall be evidenced by a written agreement signed by the Executive Director and the parties which may provide for oral apologies or assurances, written undertakings, or any other terms satisfactory to the parties. No oral or written statements made in conciliation proceedings may be used as a basis for any discipline or recommended discipline against a subject police officer or officers or in any civil or criminal litigation.

(2) The parties may agree in writing that a written conciliation agreement shall not be a public document and shall not be available to the public, as would normally be required pursuant to the Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96; D.C. Code § 1-1521 *et seq.*).

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(c) If conciliation efforts are unsuccessful, the Executive Director may dismiss the complaint in accordance with sections 8 and 9, refer the complaint to mediation, or refer the complaint for investigation.

(d) If the Executive Director refers the complaint to mediation, the Executive Director shall assign the matter to a member of the pool who is experienced in mediation, shall schedule an initial mediation session for the earliest convenient time, and shall notify the complainant and subject police officer or officers in writing of the date, time, and location of the initial mediation session.

(e) The complainant, the subject police officer or officers, and the mediator shall be present at mediation sessions. Alternatively, the mediator may meet individually with the complainant and the subject police officer or officers. Except as provided in this subsection, no other person may be present or participate in mediation sessions, except as determined by the mediator to be required for a fair and expeditious mediation of the complaint. An interpreter shall be present when necessary for effective communication and shall be provided by the Office when timely requested by a party. When the complainant is under 18 years of age or is an adult who, because of mental, physical, or emotional condition or disability, cannot participate competently in mediation, a parent, guardian, conservator, or other responsible adult must be present at mediation sessions.

(f) The mediation process shall continue as long as the mediator believes it may result in the resolution of the complaint, except that it may not extend beyond 30 days from the date of the initial mediation session without the approval of the Executive Director. No oral or written statement made during the mediation process may be used by the Office or the MPD as a basis for any discipline or recommended discipline of the subject police officer or officers, nor in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.

(g) If mediation is successful, the mediator and the parties shall sign a mediation agreement resolving the complaint. The Executive Director shall place a copy of the mediation agreement in the complaint file and shall forward a copy of the mediation agreement to the Police Chief. The Police Chief shall monitor the conduct of the police officer or officers to determine that the police officer complies with the terms of an agreement reached after mediation.

(h) The parties may agree in writing that a mediation agreement shall not be a public document and shall not be available to the public, as would normally be required pursuant to the Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96; D.C. Code § 1-1521 *et seq.*).

(i) If mediation efforts are unsuccessful, the Executive Director may dismiss the complaint in accordance with sections 8 and 9, may refer the complaint for investigation, or may refer the complaint for adjudication if the Executive Director determines that further investigation is unnecessary.



(j) If, after the Executive Director refers a complaint to mediation, the complainant willfully fails to participate in good faith in the mediation process, the Executive Director may dismiss the complaint in accordance with sections 8 and 9, may refer the complaint for investigation, or may refer the complaint to a complaint examiner for adjudication of the merits of the complaint if the Executive Director determines that further investigation is unnecessary.

(k) If, after the Executive Director refers a complaint to mediation, any police officer subject to the complaint refuses to participate in the mediation process in good faith, such refusal or failure shall constitute cause for discipline by the Police Chief. The Police Chief shall cause appropriate disciplinary action to be instituted against the police officer for such a violation and shall notify the Executive Director of the outcome of such action. In the event that the subject police officer refuses to participate in the mediation process or fails to participate in the mediation process in good faith, the Executive Director shall refer the complaint for investigation, or may refer the complaint for adjudication if further investigation is deemed unnecessary.

**Sec. 12. Complaint investigation, findings, and determination.**

**New Section  
4-921**

(a) If the Executive Director refers a complaint for investigation, the Executive Director shall assign an investigator to investigate the complaint.

(b) If the complainant refuses to cooperate in the investigation, the Executive Director may dismiss the complaint in accordance with sections 8 and 9.

(c) The Executive Director is authorized to cause the issuance of subpoenas under the seal of the Superior Court of the District of Columbia compelling the complainant, the subject officer or officers, witnesses, and other persons to respond to written or oral questions, or to produce relevant documents or other evidence as may be necessary for the proper investigation and determination of a complaint. The service of any such subpoena on a subject police officer or any other employee of the MPD may be effected by service on the Police Chief or on his designee, who shall deliver the subpoena to the subject police officer or employee. The Police Chief or his designee shall transmit the return of service to the Office. Statements made pursuant to a subpoena shall be given under oath or affirmation.

(d) Employees of the MPD shall cooperate fully with the Office in the investigation and adjudication of a complaint. Upon notification by the Executive Director that an MPD employee has not cooperated as requested, the Police Chief shall cause appropriate disciplinary action to be instituted against the employee, and shall notify the Executive Director of the outcome of such action. An employee of the MPD shall not retaliate, directly or indirectly, against a person who files a complaint under this act. If a complaint of retaliation is sustained under this act, the subject police officer or employee shall be subject to appropriate penalty, including dismissal. Such disciplinary action shall not be taken with respect to an employee's invocation of the Fifth Amendment privilege against self-incrimination.

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(e) When the investigator completes the investigation, the investigator shall summarize the results of the investigation in an investigative report which, along with the investigative file, shall be transmitted to the Executive Director. After reviewing the investigative report and the investigative file, the Executive Director may dismiss the complaint in accordance with sections 8 and 9, may direct the investigator to undertake additional investigation, or may refer the complaint to a complaint examiner designated by the Executive Director to determine the merits of the complaint.

(f) Upon receiving a complaint, a complaint examiner may request that the Executive Director order additional investigation, may proceed to determine the merits of the complaint in a fair and expeditious manner based on the investigative report and the investigative file, or may hold an evidentiary hearing. If the complaint examiner determines that an evidentiary hearing is necessary to determine fairly the merits of a complaint, the testimony at such hearing shall be under oath or affirmation, and the parties may be represented by counsel. A complaint examiner shall have the authority to administer an oath or affirmation to a witness.

(g) If, after the Executive Director assigns a complaint to a complaint examiner, the parties indicate to the complaint examiner that they are willing to resolve the complaint through conciliation or mediation, the complaint examiner may act as a conciliator or mediator. If a party already is represented by counsel, that party may continue to be represented by counsel during this conciliation or mediation process. If one party is represented by counsel and the other party is not so represented, the complaint examiner shall, upon request, give the unrepresented party a reasonable time to obtain counsel before commencing the mediation or conciliation process. Any resulting written conciliation or mediation agreement may be confidential as provided in section 11(h), and neither any such agreement nor any oral nor written statement made by a party during the course of the conciliation or mediation process may be used as a basis for any discipline or recommended discipline of the subject police officer or officers or in any civil or criminal litigation, except as otherwise provided by the rules of court or the rules of evidence.

(h) Upon review of the investigative file and the evidence adduced at any evidentiary hearing, and in the absence of the resolution of the complaint by conciliation or mediation, the complaint examiner shall make written findings of fact regarding all material issues of fact, and shall determine whether the facts found sustain or do not sustain each allegation of misconduct. In making that determination, the complaint examiner may consider any MPD regulation, policy, or order that prescribes standards of conduct for police officers. For purposes of this act, these written findings of fact and determinations by the complaint examiner (collectively, the "merits determination") may not be rejected unless they clearly misapprehend the record before the complaint examiner and are not supported by substantial, reliable, and probative evidence in that record.

(i) If the complaint examiner determines that 1 or more allegations in the complaint is sustained, the Executive Director shall transmit the entire complaint file, including the merits

determination of the complaint examiner, to the Police Chief for appropriate action. If the complaint examiner determines that no allegation in the complaint is sustained, the Executive Director shall dismiss the complaint and notify the parties and the Police Chief in writing of such dismissal with a copy of the merits determination.

**Sec. 13. Action by the Metropolitan Police Department.**

**New Section  
4-922**

(a) Upon receipt of a complaint file in which 1 or more allegations in a complaint has been sustained, the Police Chief shall cause the file to be reviewed within 5 working days after receiving the complaint file. This review shall not be conducted by persons from the same organizational unit as the subject police officer or officers. All persons conducting the review shall be senior in grade or rank to the subject police officer or officers.

(b) The review of the complaint file shall include a review of the personnel file of the subject officer or officers, including any record of prior misconduct by the subject police officer or officers. Within 15 working days after receiving the complaint file from the Police Chief, the reviewing officers shall make a written recommendation, with supporting reasons, to the Police Chief regarding an appropriate penalty from the Table of Penalties Guide in General Order 1202.1 (Disciplinary Procedures and Processes). This recommendation may include a proposal for any additional action by the Police Chief not inconsistent with the intent and purpose of the citizen complaint review process.

(c) The review may include a proposal that the Police Chief return the merits determination to the Executive Director for review by a final review panel as set forth in subsection (g) of this section, if those charged with the review conclude, with supporting reasons, that, insofar as it sustains 1 or more allegations in the complaint, the merits determination clearly misapprehends the record before the complaint examiner and is not supported by substantial, reliable, and probative evidence in that record. The staff recommendation may not propose the supplementation of the evidentiary record before the complaint examiner.

(d) Within 5 working days after receiving the staff recommendation, the Police Chief shall notify the complainant and the subject police officer or officers in writing of the staff recommendation, and shall afford the complainant and the subject police officer or officers an opportunity to file with the Police Chief, within a reasonable time period set by the Police Chief, a written response to the staff recommendation. The Police Chief shall give full consideration to the written responses received from the complainant and the subject police officer or officers before taking final action with regard to the complaint.

(e) Within 15 working days after receiving the written responses of the complainant and the subject officer or officers, or within 15 working days of the deadline set for receipt of such responses, whichever is earlier, the Police Chief shall issue a decision as to the imposition of discipline upon the subject police officer or officers. The decision of the Police Chief shall be in writing and shall set forth a concise statement of the reasons therefor. The Police Chief may

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not reject the merits determination, in whole or in part, unless the Police Chief concludes, with supporting reasons, that the merits determination clearly misapprehends the record before the complaint examiner and is not supported by substantial, reliable, and probative evidence in the record before the complaint examiner. The Police Chief may not supplement the evidentiary record.

(f) The Police Chief shall notify the Executive Director, the complainant, and the subject police officer or officers in writing of the action taken by the Police Chief, and shall include in such notice a copy of the decision.

(g) The decision of the Police Chief shall be a final decision with no further right of administrative review, other than as provided in section 15(f), except in the following circumstances:

(1) The Police Chief may reopen any closed matter in the interests of fairness and justice; or

(2) If the Police Chief concludes on the basis of a staff recommendation under subsection (c) of this section, or otherwise, that insofar as it sustains 1 or more allegations of the complaint, the merits determination clearly misapprehends the record before the complaint examiner, and is not supported by substantial, reliable, and probative evidence in the record, the Police Chief shall return the merits determination to the Executive Director for review by a final review panel comprised of 3 complaint examiners (not including the complaint examiner who prepared the merits determination) selected by the Executive Director. Upon review of the record, and without taking any additional evidence, the final review panel shall issue a written decision, with supporting reasons, regarding the correctness of the merits determination to the extent that the Police Chief has concluded that it erroneously sustained 1 or more allegations of the complaint. The final review panel shall uphold the merits determination as to any allegation of the complaint that the determination was sustained, unless the panel concludes that the determination regarding the allegation clearly misapprehends the record before the original complaint examiner and is not supported by substantial, reliable, and probative evidence in that record. A copy of the decision of the final review panel shall be transmitted to the Executive Director, the complainant, the subject police officer or officers, and the Police Chief.

(h) If the final review panel concludes that the merits determination sustaining 1 or more allegations of the complaint should be reversed in its entirety, the Executive Director shall dismiss the complaint, and notify the parties and the Police Chief in writing of such dismissal. If the final review panel concludes that the merits determination should be upheld as to any allegation of the complaint that the determination has sustained, the Police Chief, within 15 working days of receipt of the panel's decision, shall issue a supplemental decision as to the imposition of discipline upon the subject officer or officers that is fully consistent with the panel's decision. The supplemental decision of the Police Chief shall be in writing and shall set forth a concise statement of the reasons therefor. The Police Chief shall notify the Executive Director, the complainant, and the subject police officer or officers in writing of the action taken

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by the Police Chief, and shall include in such notice a copy of the supplemental decision. The supplemental decision of the Police Chief shall be a final decision with no further right of administrative review, other than as provided in sections 13(g) and 15(f).

**Sec. 14. Effect of order dismissing complaint.**

**New Section  
4-923**

(a) An order of the Executive Director dismissing a complaint shall be a final resolution of the complaint by the Office. Such order shall be neither appealable to nor reviewable by any other entity, administrative or judicial.

(b) An order of the Executive Director dismissing a complaint for any reason, including a dismissal based upon an adjudication of the merits of a complaint by a complaint examiner and a decision of a final review panel that reverses a merits determination of a complaint examiner, shall not bar the complainant from seeking any judicial relief that may be available pursuant to the statutory and common law of the District of Columbia.

**Sec. 15. Metropolitan Police Department disciplinary authority.**

**New Section  
4-924**

(a) The MPD shall have full authority, under the procedures established pursuant to section 1 of An Act Relating to the Metropolitan Police of the District of Columbia, approved February 28, 1901 (31 Stat. 819; D.C. Code § 4-118), to initiate disciplinary proceedings against an officer of the MPD with respect to a charge of misconduct within the scope of section 8 prior to the timely filing of a complaint with the Office.

(b) If the MPD has initiated disciplinary proceedings against an officer of the MPD for alleged misconduct, the subsequent timely filing with the Office of a complaint against the same officer or officers, alleging the same misconduct, shall not preclude the MPD from proceeding with its own disciplinary process. Nor shall the fact that the MPD has initiated disciplinary proceedings against a police officer for alleged misconduct preclude the Office from processing a complaint that was timely filed against the same officer and alleging the same misconduct, except that the Police Chief may not punish the same officer more than once for the same act or omission that constitutes misconduct.

(c) When the MPD has not initiated a disciplinary proceeding against a police officer prior to the timely filing of a complaint with the Office, the MPD shall not initiate a disciplinary proceeding against the subject police officer or officers with regard to misconduct alleged in such complaint until the Office disposes of the complaint.

(d) A merits determination by a complaint examiner, on the basis of an evidentiary hearing, that no allegation of misconduct in the complaint is sustained, as well as a decision of a final review panel that reverses in its entirety a merits determination that sustained 1 or more allegations of the complaint, precludes the MPD from imposing discipline on the subject police officer or officers with respect to any allegation of misconduct contained in the complaint.

(e) A merits determination by a complaint examiner, on the basis of an evidentiary hearing, or a later decision of a final review panel, if any, shall be binding on the subject police

**ENROLLED ORIGINAL**

officer or officers and on the Police Chief in all subsequent proceedings as to all essential facts determined and all violations found.

(f) If the complaint examiner has not held an evidentiary hearing and the Police Chief imposes termination as a disciplinary action, the affected police officer shall be entitled to a post-termination administrative proceeding as provided by law. A police officer disciplined by the Police Chief, whether by termination or otherwise, shall be entitled to whatever administrative disciplinary proceeding is afforded under any applicable collective bargaining agreement.

**Sec. 16. Funding and compensation.**

**New Section  
4-925**

(a) There are authorized such funds as may be necessary to support the Board and the Office.

(b) The establishment of the Board and the Office are dependent upon the availability of appropriated funds.

(c) Any entitlement to compensation under this act for services rendered shall be dependent upon the availability of appropriated funds to pay such compensation.

**Sec. 17. Fiscal impact statement.**

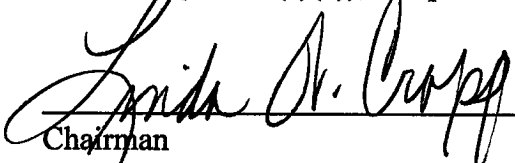
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

**Sec. 18. Effective date.**

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided

**ENROLLED ORIGINAL**

in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

  
\_\_\_\_\_  
Chairman  
Council of the District of Columbia

\_\_\_\_\_  
Mayor  
District of Columbia



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD TWELVE

RECORD OF OFFICIAL COUNCIL VOTE

Docket No. B12-521

ITEM ON CONSENT CALENDAR

ACTION & DATE ADOPTED FIRST READING, 7-7-98

VOICE VOTE APPROVED  
RECORDED VOTE ON REQUEST

ABSENT THOMAS

ROLL CALL VOTE - Result \_\_\_\_\_

| Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB |
|---------------|-----|-----|----|----|---------------|-----|-----|----|----|---------------|-----|-----|----|----|
| Chmn. Cropp   |     |     |    |    | Chavous       |     |     |    |    | Schwartz      |     |     |    |    |
| Allen         |     |     |    |    | Evans         |     |     |    |    | Smith, Jr.    |     |     |    |    |
| Ambrose       |     |     |    |    | Jarvis        |     |     |    |    | Thomas, Sr.   |     |     |    |    |
| Brazil        |     |     |    |    | Mason         |     |     |    |    |               |     |     |    |    |
| Catania       |     |     |    |    | Patterson     |     |     |    |    |               |     |     |    |    |

X - Indicates Vote AB - Absent NV - Present not Voting

CERTIFICATION RECORD

*Angie Jones*  
Secretary to the Council

*September 30, 1998*  
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE ADOPTED FINAL READING, 9-22-98

VOICE VOTE APPROVED  
RECORDED VOTE ON REQUEST

ABSENT MASON

ROLL CALL VOTE - Result \_\_\_\_\_

| Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB |
|---------------|-----|-----|----|----|---------------|-----|-----|----|----|---------------|-----|-----|----|----|
| Chmn. Cropp   |     |     |    |    | Chavous       |     |     |    |    | Schwartz      |     |     |    |    |
| Allen         |     |     |    |    | Evans         |     |     |    |    | Smith, Jr.    |     |     |    |    |
| Ambrose       |     |     |    |    | Jarvis        |     |     |    |    | Thomas, Sr.   |     |     |    |    |
| Brazil        |     |     |    |    | Mason         |     |     |    |    |               |     |     |    |    |
| Catania       |     |     |    |    | Patterson     |     |     |    |    |               |     |     |    |    |

X - Indicates Vote AB - Absent NV - Present not voting

CERTIFICATION RECORD

*Angie Jones*  
Secretary to the Council

*September 30, 1998*  
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE \_\_\_\_\_

VOICE VOTE \_\_\_\_\_  
RECORDED VOTE ON REQUEST

ABSENT \_\_\_\_\_

ROLL CALL VOTE - Result \_\_\_\_\_

| Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB | Councilmember | Aye | Nay | NV | AB |
|---------------|-----|-----|----|----|---------------|-----|-----|----|----|---------------|-----|-----|----|----|
| Chmn. Cropp   |     |     |    |    | Chavous       |     |     |    |    | Schwartz      |     |     |    |    |
| Allen         |     |     |    |    | Evans         |     |     |    |    | Smith, Jr.    |     |     |    |    |
| Ambrose       |     |     |    |    | Jarvis        |     |     |    |    | Thomas, Sr.   |     |     |    |    |
| Brazil        |     |     |    |    | Mason         |     |     |    |    |               |     |     |    |    |
| Catania       |     |     |    |    | Patterson     |     |     |    |    |               |     |     |    |    |

X - Indicates Vote AB - Absent NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date