

March 20, 2017

The Hon. Charles Allen, Chairman
Council Committee on the Judiciary and Public Safety
The John A. Wilson Building
1350 Pennsylvania Avenue NW
Washington D.C. 20004

Dear Councilmember Allen:

I write to share the enclosed update on the status of the Metropolitan Police Department's implementation of recommendations made in the report issued by this office in January 2016, entitled *The Durability of Police Reform: The Metropolitan Police Department and Use of Force 2008-2015*.

Of the 38 recommendations included in the report -- produced on our behalf by The Bromwich Group -- the MPD is reporting that it has implemented 15 recommendations, has implemented another 13 in part, and five recommendations are "in progress." MPD indicates that five of the recommendations will not be implemented, primarily because the Department disagrees with the recommendation. The "comments" section includes explanations.

Because this was a contract audit and not produced by the ODCA staff, we are not including the recommendations in our annual compliance reporting. We share with you and your colleagues so that the Committee may follow up on the findings and recommendations in the course of your oversight of the MPD. Please let me know if you have any questions on the information.

Thank you.

Sincerely yours,



Kathleen Patterson
District of Columbia Auditor

cc: Councilmembers
Officers of the Council
Betsy Cavendish, Counsel to the Mayor



**Implementation of Recommendations for:
The Durability of Police Reform: The Metropolitan
Police Department and Use of Force 2008-2015**
Issued January 2016

The following provides the status of the Metropolitan Police Department's implementation of recommendations made by the Office of the D.C. Auditor. The Metropolitan Police Department provided the information below on March 15, 2017 and we include their response in full.

- **Implemented** – Agency has implemented recommendation
- **In progress** – Management is implementing but implementation is not yet complete
- **Will not be implemented** – Agency disagrees with recommendation and will not implement; agency accepts risk

	Recommendation	Status	Comments
1	MPD's use of force policy should be modified to include more detailed treatment of neck restraints, and that any use of neck restraints by MPD officers be treated as a serious use of force and be investigated by IAD.	Implemented	The Metropolitan Police Department's (MPD's) revised version of GO-RAR-901.07 (Use of Force), published August 12, 2016, includes a more detailed discussion of the prohibition against neck restraints and requires that the use of neck restraints be classified as a serious use of force. All serious uses of force are investigated by MPD's Internal Affairs Division (IAD).
2	MPD should comprehensively review and, if necessary, revise its use of force policies no less frequently than every two years.	Implemented	MPD considers our use of force policies throughout our use of force investigations, and the Use of Force Review Board (UFRB) is mandated to continually consider policy and recommend updates if needed. To further codify these practices, we are revising GO-RAR-901.09 our (Use of Force Review Board) to require the Board to conduct a formal, documented review of the GO-RAR- 901.07 (Use of Force) and GO 901.08 (Use of Force Investigations) every two years.

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3	MPD's canine policy should restrict off-leash deployments to searches for suspects wanted for violent felonies; searches for burglary suspects in hidden locations inside buildings; or who are wanted for a misdemeanor and whom the officers reasonably believe to be armed.	In Progress	As currently worded, the Auditor's recommendation would allow off-leash searches for suspects of non-violent <i>misdemeanors</i> who are suspected of being armed, but not non-violent <i>felonies</i> who are suspected of being armed. Accordingly, we are revising our policy to limit off-leash deployments to searches for (1) suspects of crimes of violence as defined in D.C. Code 23-1331(4) ¹ or (2) suspects who are reasonably suspected of being armed.
4	MPD's canine policy should require that the number of verbal warnings provided prior to canine deployment be increased from one to three; and that in open field or block searches, an additional warning be given each time the canine team has relocated the equivalent of a city block from where the initial warnings were given.	In Progress	MPD is currently working on an updated version of GO-RAR-306.01 (Canine Teams) that includes the requirement that three warnings be given, when tactically sound, to include each time the canine team has relocated the equivalent of a city block from where the initial warnings were given. While we believe that the additional warnings are good practice, we believe it is critical to clarify that the additional warnings should only be given when tactically sound to ensure officer safety.
5	MPD should reinstate use of force reporting for hand controls and resisted handcuffing.	Will Not Be Implemented	MPD disagrees with this recommendation. MPD's policy remains that all uses of force that result in injury or a complaint of pain to any person are both reported and investigated, to include the use of hand controls and resisted handcuffing. However, members routinely encounter arrestees who do not willingly submit to

¹The term "crime of violence" means aggravated assault; act of terrorism; arson; assault on a police officer (felony); assault with a dangerous weapon; assault with intent to kill, commit first degree sexual abuse, commit second degree sexual abuse, or commit child sexual abuse; assault with significant bodily injury; assault with intent to commit any other offense; burglary; carjacking; armed carjacking; child sexual abuse; cruelty to children in the first degree; extortion or blackmail accompanied by threats of violence; gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation; kidnapping; malicious disfigurement; manslaughter; manufacture or possession of a weapon of mass destruction; mayhem; murder; robbery; sexual abuse in the first, second, or third degrees; use, dissemination, or detonation of a weapon of mass destruction; or an attempt, solicitation, or conspiracy to commit any of the foregoing offenses.

	Recommendation	Status	Comments
			<p>handcuffing. In those cases, hand control procedures such as the use of firm grips and escort holds assist the officers in placing handcuffs on arrestees while ensuring both the safety of the officer and the arrestee. In the vast majority of those cases, the result is no injury or complaint of pain. While there may be limited value in tracking this information, on a practical level, this must be weighed against the consequences: requiring officers to take time off the street, away from their patrol duties, to complete an administrative report documenting the justified use of hand controls every time a suspect offers minor resistance when being handcuffed.</p>
6	<p>MPD should reinstate use of force reporting <i>and investigations</i> for individual and team takedowns.</p>	<p>Implemented in Part</p>	<p>MPD's policy remains that all uses of force that result in injury or a complaint of pain to any person are both reported and investigated, including takedowns. Additionally, MPD's revised version of GO-RAR-901.07 (Use of Force), published August 12, 2016, added a requirement to report solo and team takedowns where there is no complaint of pain or injury. However, we continue to disagree that takedowns without injury or complaint of pain should result in a full investigation unless there is an injury or complaint of pain.</p>
7	<p>MPD should make all substantive changes in use for force reporting and investigations polices through a transparent process that ensures that the public, all MPD stakeholders, and MPD officers have access to current MPD policies, rather than through limited internal communications.</p>	<p>Implemented</p>	<p>MPD's revised version of GO-OMA-101.00 (Directives System), published June 3, 2016, eliminated the decades-long practice of issuing policy updates by internal teletypes. The updated version of GO-OMA-101.00 (Directives System) authorizes the creation of "executive orders." Executive orders allow the Chief of Police to change policies and procedures in an expeditious manner, similar to the former teletype process. However, approved executive orders are available on the internal "MPD Directives Online" website for our members, as well as the MPD public website. They are also linked to</p>

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8	IAD should develop a comprehensive use of force investigations procedural manual that incorporates the requirements of the MOA, relevant General Orders, and an appropriate set of procedures based on the original FIT Manuals.	In Progress	the policies they amend to make changes clear. MPD is finalizing an updated IAD Operations Manual governing the standard operating procedures for conducting both use of force and police misconduct investigations. The revised manual consolidates the contents of the previous Force Investigation Team (FIT) and IAD Manuals, related MPD policies, and incorporates relevant requirements of the 2001 Department of Justice Memorandum of Agreement (MOA).
9	MPD should require that all civilian witnesses and officer witnesses involved in a use of force matter be interviewed and that the interviews be either audio and/or video recorded, except when a civilian witness declines to give consent to taping.	Implemented in Part	The 2001 Department of Justice MOA required – and MPD’s policy since 2002 has been – that in investigations involving a serious use of force or serious physical injury, interviews of complainants, involved officers, and material witnesses are tape recorded or videotaped. However, we disagree that the statements in all use of force investigations need to be recorded. IAD reviews all use of force incidents to determine who will conduct the investigations (i.e., IAD or chain of command officials.) By policy, serious use of force investigations (e.g., firearm discharges, canine bites, uses of force indicating potential criminal conduct) are always investigated by IAD, and those interviews are recorded.
10	MPD should transcribe all recorded statements in serious use of force cases and the transcript should be included in the investigative file for ease of reference and to ensure the accuracy of investigative reports.	In Progress	While MPD believes, and our policy requires, that statements in serious use of force cases be recorded, we do not believe that all recorded statements in serious use of force cases must be transcribed. MPD’s draft IAD Operations Manual, once implemented, will require the transcription of statements in the following cases investigated by IAD: <ul style="list-style-type: none"> • Fatal uses of force; • Police shootings that result in injury; • Cases where the misconduct will likely result in an

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		<p>adverse action hearing;</p> <ul style="list-style-type: none"> • In-custody deaths; • Vehicle pursuits resulting in a fatality; and • Any other cases as determined by the Commanding Official of IAD.
<p>11</p> <p>MPD should restructure the Internal Affairs Division so that it contains specialists in conducting use of force investigations. This restructuring does not require the reversal of the FIT/IAD merger, which was driven primarily by a diminishing caseload. The use of force investigative specialists can undertake non-use of force investigations, but use of force would be considered their special area of expertise. They would serve as lead investigators on all serious use of force investigations. The members of this group should be officers who have demonstrated the proper attitude and skills for conducting use of force investigations.</p>	<p>Will Not Be Implemented</p>	<p>MPD disagrees with this recommendation. MPD's IAD agents are trained in conducting comprehensive use of force investigations. MPD continues to conduct specialized in-service training for our IAD investigators to enhance their skills, and the training includes training on use of force and other topics that are central to conducting internal affairs investigations. MPD also continues to ensure that personnel selected for IAD positions have the required skills and commitment to producing fair and impartial investigations.</p>
<p>12</p> <p>MPD should provide the use of force specialists with comprehensive, specialized training similar to the training that was provided to FIT when it was formed in 1999. This training should include, among other things, instruction on how to conduct tactical analyses that evaluate the decisions that led up to the use of force, not merely the use of force itself. The training should instruct the investigators on how, as part of such a comprehensive analysis, they should identify any policy, training, or equipment issues raised by the use of force incident.</p>	<p>Implemented</p>	<p>Upon assignment, all new IAD investigators are provided with comprehensive training by an IAD official on conducting use of force investigations. The training emphasizes conducting tactical analyses of the decisions that lead up to the use of force as well as identifying other issues (e.g., policy, training, equipment) raised by the incident.</p>
<p>13</p> <p>MPD should reinstate the practice of requiring IAD investigators to respond to the scene of all serious use of force incidents, including but not limited to head strikes and canine bites.</p>	<p>Implemented</p>	<p>On November 10, 2015, MPD reinstated the requirement that IAD investigators respond to the scene of head strikes and canine bites, consistent with our policy to respond to the scene of all serious uses of force.</p>
<p>14</p> <p>MPD should require that IAD investigators be required to investigate all reported or claimed strikes to the head</p>	<p>Implemented in Part</p>	<p>For more than fifteen years, MPD's policy has required that IAD be responsible for conducting the investigation</p>

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<p>whether or not the head strike is confirmed by a field supervisor and regardless of whether there is an injury or corroborative evidence; and that IAD investigators be required to investigate all canine bites.</p>		<p>of canine bites and confirmed head strikes. MPD remains committed to this policy. However, the <i>Neighborhood Engagement Achieves Results Act of 2015</i> (D.C. Law 21-125; D.C. Official Code § 5-1107) effective June 30, 2016, grants the Office of Police Complaints (OPC) sole authority to determine whether MPD or OPC will investigate citizen complaints, including complaints of excessive force. Claims or complaints of head strikes will be referred to OPC for determination on who will investigate the complaint consistent with District law.</p>
<p>MPD and the United States Attorney's Office for the District of Columbia should work together to reengineer the system for reviewing the most serious use of force cases involving MPD officers with the goal of eliminating lengthy delays.</p>	<p>Implemented in Part</p>	<p>The Chief of Police continues to meet monthly with the United States Attorney's Office (USAO), and those meetings provide an opportunity to discuss the status of our serious use of force cases. The USAO is an important partner, and they have demonstrated an ongoing commitment to reducing the length of their reviews. We will continue to work with them to ensure that reviews proceed as expeditiously as possible.</p>
<p>MPD and the USAO should establish a goal of completing the USAO review of serious use of force cases within six months, with that period to be extended only by explicit agreement between the US Attorney and the Chief of Police, and the specific reasons provided that justify the need for additional time.</p>	<p>Will Not Be Implemented</p>	<p>As described above, MPD has been very pleased with the commitment shown by the USAO in reviewing our serious use of force cases in a timely manner and will continue to work with the USAO to support any protocols that can be put in place to help expedite their reviews.</p>
<p>MPD should require that the IAD administrative investigation move forward expeditiously while a case involving a serious use of force is being considered by the USAO. The objective should be to minimize any additional investigation once the case has been returned to MPD, and to complete the IAD administrative investigation and investigative report with 30 days of the time the letter of declination is received. The IAD investigator's performance evaluation should explicitly</p>	<p>Implemented in Part</p>	<p>IAD supervisors work closely with their subordinate investigators to ensure they proceed with their investigations to the greatest degree possible (conducting interviews, etc.) while awaiting USAO declination decisions. This requirement is also being added to the draft IAD Operations Manual. The timeliness and quality of investigations are also considered in IAD investigator performance evaluations.</p>

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	consider the timeliness of the investigations he or she conducts.		However, MPD disagrees that all cases can be completed within 30 days of a declination. There are times when extensions beyond 30 days of the declination are warranted and allow for a more comprehensive, complete investigation of the incident.
18	MPD should provide members newly appointed to the UFRB with specific orientation and training on their responsibility as UFRB members and the responsibilities of others involved in the UFRB process, including the UFRB Administrator, the Assistant Chief of IAB, the Commander of IAD, and IAD investigators.	Implemented	MPD's revised version of GO-RAR-901.09 (Use of Force Review Board), published March 30, 2016, requires that the UFRB Chairperson conduct an orientation with new Board members to include a review of the policy governing the UFRB, the role of the Board members and IAD, and a general overview of Board operations.
19	The UFRB should actively monitor the progress of IAD in completing use of force investigations and raise concerns about the timeliness of use of force investigations with the Assistant Chief of IAB and, if necessary, the Chief of Police. This will help to avoid cases in which the UFRB's freedom to take appropriate action is hamstrung because it receives the investigative report so late in the process.	Implemented	MPD's GO-RAR-901.09 (Use of Force Review Board) continues to require the UFRB Administrator to track the progress of investigations conducted by the IAD and notify the Assistant Chief, Internal Affairs Bureau (IAB), regarding any cases that are at risk of missing the 90-day deadline. In addition, the UFRB was moved under the purview of the Office of Risk Management (ORM) at the end of fiscal year 2016. This allows a risk-based approach to cases and monitoring. The ORM works with the UFRB Chairperson and the Assistant Chief of IAB to ensure timely disposition of cases.
20	The UFRB should enforce the requirement that a Decision Point Analysis be prepared for each case that comes before the UFRB, but should consider transferring the responsibility for preparing the Analysis to the IAD investigator rather than the UFRB Administrator.	Implemented in Part	In MPD's revised GO-RAR-901.09 (Use of Force Review Board), we have clarified that the Board must prepare a decision point matrix analysis, and the analysis must be incorporated into the record of the meeting. We believe it is critical for the matrices to be prepared during the meeting, with input from all Board members, and not in advance by the UFRB administrator or the case investigator for two key reasons. First, there is a risk that if the matrix is prepared in advance, it may unintentionally sway the Board members as to what the

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21	<p>The Review Team recommends that the Board Administrator highlight the most significant pieces of evidence so that each member makes sure to examine those items with special care.</p>	Will Not Be Implemented	<p>decision points in the use of force incident actually are. Second, we do not want to risk creating an environment where our Board members may potentially rely on reading the summaries in advance of the hearing in lieu of reading the actual investigation.</p> <p>MPD believes that for the UFRB to function as intended, Board members must have the responsibility, as part of their review, to highlight what they find to be the most significant pieces of evidence. Similar to our view on the decision point matrix, we believe there is risk in having someone other than the Board members responsible for the identification of the most significant pieces of evidence.</p>
22	<p>The UFRB should consult with the Assistant Chief of IAB and the Commander of IAD on a quarterly basis to provide feedback on the quality and timeliness of recent IAD use of force investigations.</p>	Implemented	<p>MPD agreed with this recommendation, but felt this communication needed to occur more frequently than quarterly. The UFRB Chairperson and the Assistant Chief of IAB were already routinely communicating regarding the quality and timeliness of investigations. However, the March 30, 2016, revision of GO-RAR-901.09 (Use of Force Review Board) codified this practice by requiring that the Board notify the IAB at any time during their review when they find a use of force investigation to be lacking in quality or timeliness.</p>
23	<p>The officer's direct supervisor, as well as the second-level supervisor, should in all cases be involved in the SSP review.</p>	Implemented	<p>MPD Standard Operating Procedure (SOP) 07-01 [Personnel Performance Management System (PPMS) and Supervisory Support Program (SSP)] requires (1) that the member's direct supervisor be involved in the SSP process, to include an initial meeting with the member to review the incidents that lead to the SSP, (2) a meeting be held with the member's other command officials to review the SSP intervention plan with the member, and then (3) a meeting be held every two weeks thereafter to</p>

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			ensure the member is making sufficient progress with his or her SSP plan.
24	SSP should be modified to flag officers against whom multiple use of force or misconduct allegations have been logged even if those allegations were not substantiated.	Implemented in Part	A focus of MPD's Professional Conduct and Intervention Board (PCIB) has been to review members who have multiple uses of force within a given time period. It is important to note that the use of force is a necessary component of police work and when used consistent with the law and MPD policy, is an important tool that officers have to protect both themselves and others from harm. However, we also realize that use of force situations present a risk both to the officer and the agency. By having the Board examine officers with multiple uses of force and/or allegations of misconduct, we can identify officers who may need additional training and support.
25	MPD's analysis of PPMS data should focus not only on individuals but also on units and sub-units within MPD.	Implemented in Part	While PPMS's front-end reporting function is currently limited, the PCIB administrator has looked at districts and units when identifying members for PCIB review. By focusing on particular police districts and units within those districts, the Board is able to evaluate broader management issues than would otherwise be possible by focusing on individual members only. We are also exploring how PPMS and SSP may be modified to generate reports that focus on units and sub-units within the Department.
26	The PCIB Administrator should prepare an analysis of each case in advance of PCIB meetings. At present, substantial raw material is provided to the PCIB but no analysis.	Will Not Be Implemented	While the PCIB was created by MPD long after the termination of the MOA, we appreciate the recommendations made by the Auditor regarding the administrative operations of the Board. That being said, we disagree with this recommendation for the same reason we do not feel that the UFRB administrator or case investigator should prepare case summaries of use

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			<p>of force cases in advance of meetings. There is a risk that if the PCIB administrator prepares a summary in advance, Board members will not take the opportunity to conduct their own analyses. However, the PCIB administrator will continue to prepare a data summary report of all members who appear before the Board.</p>
27	<p>The PCIB Administrator should outline remedial options based on review of the officer's record and the PCIB's actions in prior similar cases.</p>	<p>Implemented in Part</p>	<p>Since its inception, the PCIB has identified remedial options that may be appropriate based on the Board's review of individual members, including, but not limited to, interventions with management officials, referral to our employee assistance program, and referral to newly developed tactical communication training. However, we feel that the discussions and input of all Board members during the meetings are key elements to ensuring that when remedial options are chosen, they reflect the full range of knowledge and input from our Board members. We do not want to inadvertently limit our analyses or options by requiring the Board administrator to prepare them in advance.</p>
28	<p>The Assistant Chief of IAB should direct the PCIB Administrator to circulate in writing, on a quarterly basis, developments in cases previously considered.</p>	<p>Implemented in Part</p>	<p>As part of her ongoing duties, the PCIB administrator periodically reviews the status of members previously reviewed by the Board to see if there have been further developments, either positive or negative, with those members, and notifies the Board as appropriate.</p>
29	<p>The monthly PCIB meetings should be used to discuss new cases rather than review cases previously discussed. Developments in prior cases should be addressed in writing, distributed to Board members, and can be placed on the agenda if requested by a Board member.</p>	<p>Implemented in Part</p>	<p>While the discussion of new cases accounts for the vast majority of time at Board meetings, we believe there is value in discussing developments in previous cases before the Board as a whole on an as-needed basis to get input and suggestions from members on any additional actions by the Board that may be warranted.</p>
30	<p>ORM must be operated under leadership capable of formulating and directing substantive audits, including MOA-</p>	<p>Implemented</p>	<p>MPD remains committed to ensuring ORM command officials conduct substantive and comprehensive audits.</p>

	Recommendation	Status	Comments
	related audits.		
31	ORM's annual audit plan should contain a significant percentage of audits focused on MOA-related issues.	Implemented	MPD is committed to ensuring that MOA-related audits are conducted on an annual basis. However, the number of MOA audits conducted will vary from year to year depending on the risk factors faced by the Department.
32	ORM should provide its annual audit plan to the District of Columbia Auditor and the District of Columbia Office of the Inspector General.	Implemented	MPD has shared its Fiscal Year 2017 audit plan with the District of Columbia Auditor and the Office of the Inspector General.
33	MPD should reexamine whether, as a matter of policy, mere flight is sufficient grounds for pursuing a suspect, and for stopping him, and should provide comprehensive training on the issue.	Implemented	MPD's policy on conducting stops is constitutionally sound and is consistent with court findings. We provide comprehensive training to our members on conducting lawful stops.
34	MPD should provide specific intensive training for handling officer-involved shooting cases and limit the handling of those cases to a small number of skilled and experienced IAD investigators.	Implemented in Part	As previously described, MPD does not agree that there should be a limited number of use of force specialists within IAD. However, MPD remains committed to ensuring all IAD investigators are both capable and engaged in conducting comprehensive and sufficient use of force investigations. We believe the basic principles of investigations are consistent regardless of the investigation type. These principles can be applied, and with the proper training and retraining, ensure quality, comprehensive investigations in use of force as well as police misconduct. IAD investigators will continue to receive specialized training upon their assignment to the unit, and we will continue to provide specialized in-service training for our IAD investigators.
35	Once MPD completes the preliminary investigation of the officer-involved shooting in the first 24-72 hours after the incident and the cases has been referred to the USAO, the investigator, in consultation with his or her supervisor, should develop a detailed investigative plan which, as recommended above, is designed to complete the MPD administrative	Implemented in Part	MPD is committed to conducting timely investigations of officer-involved shootings, and IAD officials meet regularly with their assigned investigators for case reviews to ensure timely case progression. Our draft IAD Operations Manual includes requirements to formalize these meetings. However, we do not believe that adding

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	investigation within 30 days of the incident, with the exception of forensic reports and interviews of the involved officers.		an additional requirement to develop a separate investigative plan will ensure completion of an investigation within 30 days of the incident. Investigative plans must be flexible to accommodate the specific facts and circumstances of each case.
36	IAD investigators should scrupulously follow the requirements of MPD's Use of Force Investigations General Order in officer-involved shooting cases, which requires, among other things, that all relevant witnesses be interviewed, and that the investigator identify and attempt to resolve (if possible) inconsistencies in the accounts of witnesses to the incident.	Implemented	MPD continues to follow the requirements of GO-RAR-901.08 (Use of Force Investigations) in officer-involved shooting cases, including ensuring that all relevant witnesses are interviewed and that the investigator identifies and attempts to resolve inconsistencies in the accounts of witnesses to the incident.
37	MPD should modify its Use of Force Investigations General Order to address the problems created by using leading questions during investigative interviews and counsel IAD investigators to avoid using them to the maximum extent possible.	In Progress	MPD has added language to our draft update to GO-RAR-901.08 (Use of Force Investigations) reminding investigators to avoid using leading questions. However, it is important to note that the Auditor's report identified only one investigation where leading questions were used. MPD understands the importance of ensuring leading questions are not part of an interview, and as reported to the Auditor, MPD selected a new vendor to provide training on interview and interrogations in 2014 to ensure our investigators were provided with high quality training on this topic.
38	DC's misdemeanor Assault on Police Officer statute should be amended so that the elements of the offense require an actual assault rather than mere resistance or interference with an MPD officer.	Implemented	<i>The Neighborhood Engagement Achieves Results Act of 2015</i> (D.C. Law 21-125; D.C. Official Code § 5-1107) effective June 30, 2016, clarifies the elements of the assault on a police officer charge and creates a specific offense of resisting arrest that is more comparable to other jurisdictions.