

February 5, 2024

**VOTE “NO” ON H.R. 5798 PROTECTING OUR NATION’S CAPITAL EMERGENCY ACT OF 2023 WHICH WOULD ALLOW DANGEROUS OFFICERS WHO HAVE BEEN TERMINATED FOR CRIMINAL CONDUCT OR POLICE MISCONDUCT TO REMAIN EMPLOYED AS D.C. METROPOLITAN POLICE OFFICERS ENDANGERING PUBLIC SAFETY, EVADING ACCOUNTABILITY, AND ERODING PUBLIC TRUST.**

Dear Representative,

The American Civil Liberties Union strongly urges you to oppose H.R. 5798 which would make it easier for police officers accused of criminal conduct or police misconduct to be reinstated as D.C. Metropolitan Police Department officers. H.R. 5798 **removes key police misconduct oversight provisions** from The Comprehensive Policing and Justice Amendment Act of 2022 which was recently signed into law.

H.R. 5798 repeals key portions of current local law that address the [problems highlighted in a recent D.C. Auditor’s report of officers being rehired despite being previously terminated for police misconduct](#) or criminal conduct.

Specifically:

1. H.R. 5798 would reinstate the ineffective, slow, and costly arbitration process for handling cases where officers are accused of crimes or police misconduct and face termination of employment.
2. H.R. 5798 would place a 90-day limit on the police department to start a disciplinary response, but this bill does not place a time limit to take a case to arbitration. From 2015-2021 officers who were fired and/or their representatives allowed years to pass before bringing a case to arbitration resulting in large awards for backpay and high administrative costs for the District.
3. H.R. 5798 would remove the transparency requirement for the police department to publish on a public website a schedule of adverse action hearings in which the proposed discipline for an officer is termination, including the date, time, and location of the hearing, the name and badge number of the officer, and a summary of the alleged misconduct or charges.
4. H.R. 5798 also removes the D.C. Metropolitan Police Chief’s ability to increase proposed penalties for officers.



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**H.R. 5798 Will Reinstitute Closed-Door Arbitration Hearings for Officers Accused of Criminal Conduct and Police Misconduct, A System Which Puts Dangerous Officers Back in the Metropolitan Police Department and Costs Taxpayers Millions.**

H.R. 5798 will institute a police officer negotiated, non-public arbitration for cases where an officer has been or will be fired for misconduct. This system makes it nearly impossible to fire officers from the D.C. Metropolitan Police who have engaged in criminal conduct and conduct that violates civil liberties due to the convoluted and lopsided nature of the arbitration. According to former Metropolitan Police Department Chief Peter Newsham, the arbitration system puts “very bad police officers back into our department.”<sup>1</sup> In 2022, the Office of the District of Columbia Auditor issued a report studying the cases of officers fired and then reinstated by the D.C. Metropolitan Police from 2015 to 2021. Thirty-seven D.C. Metropolitan police officers were fired for allegations criminal conduct, civil rights violations, and officer conduct violations. These dangerous officers were reinstated, on average, 8 years later, and 36 of those officers were paid \$14.3 million in taxpayer dollars.<sup>2</sup>

Of the 37 police officers who were terminated and then reinstated by the closed-door arbitration system that H.R. 5798 would reinstitute, 17 (46%) were terminated for police misconduct defined as ‘threat to safety’ which meant these officers engaged in conduct that included a risk of harm to persons through action or inaction, such as physical and sexual violence, mishandling firearms, or compromising evidence related to an arrest.<sup>3</sup> The other 20 officers (54%) were terminated for reasons such as misrepresentation of injuries, time theft, fraud, and other misconduct that violated the Metropolitan Police rules and code of conduct<sup>4</sup> (see below for examples from the 2022 audit report).

**H.R. 5798 Will Protect Dangerous Police Officers from Being Fired and These Officers Will Continue Their Pattern and Practice of Civil Liberties Violations.**

Officers who were fired from the D.C. Metropolitan Police Department for criminal conduct or police misconduct continue their pattern of dangerous behavior and have police misconduct complaints even after being reinstated. As

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<sup>1</sup> D.C. Police Reform Commission report, page 173.

<sup>2</sup> Audit: D.C. Police Fired for Misconduct Often Got Jobs Back, The Washington Post, <https://www.washingtonpost.com/dc-md-va/2022/10/06/dc-police-fired-reinstated-backpay/> (last visited Feb 4, 2024).

<sup>3</sup> “36 Fired MPD Officers Reinstated; Receive \$14 Million in Back Pay” Office of the DC Auditor, p.10, <https://dcauditor.org/report/mpd-personnel-settlement-report/> (last visited Feb 4, 2024)

<sup>4</sup> Id.

of September 2022, 15 of the 37 officers that were fired and reinstated through the arbitration process which H.R. 5798 will reinstate are still working at the Metropolitan Police Department.<sup>5</sup> Six of the 15 officers (40%) had another official misconduct complaint filed by the Metropolitan Police Department after they were reinstated.<sup>6</sup> H.R. 5798's arbitration system encourages officers to engage in civil rights violations against the public because dangerous officers know they will simply be reinstated through the arbitration process and cannot be fired.

This bill fails to learn any of the lessons of the murder of George Floyd by police officers: officers with a pattern of misconduct must be removed from employment, not simply cycled back into positions of authority and control.

**H.R. 5798 Will Reinstate the 8 Year Arbitration Process That Pays Dangerous Police Officers \$374,000 on Average in Backpay and Costs the District \$895,000 Annually in Personnel Resources**

H.R. 5798 does not create a timelier process for the resolution of police misconduct cases. H.R. 5798 will reinstate a termination process that is not public and overseen by arbitrators. This process is heavily skewed to protect dangerous police officers by allowing them to capitalize on a drawn-out arbitration process that does not set any time limits for officers to bring their case to arbitration.

According to a 2022 Report issued by the Office of the D.C. Auditor, from 2015 to 2021, the police officer termination and reinstatement process lasted an average of 8 years, the average amount of backpay the District paid to these officers was \$374,000, and the District personnel and resources spent on these drawn-out arbitration processes totaled an estimated \$895,000 each year for a period of five years.<sup>7</sup>

H.R. 5798 sets a 90-day limit on the police department to commence corrective or adverse action against a police officer or civilian employee but does not place any time limits on the fired officers, or their representatives, to bring a case to arbitration in a timely fashion. Fired officers and their representatives have allowed years to pass before bringing a case for arbitration creating a process that takes, on average, 8 years before a misconduct case is resolved<sup>8</sup> resulting in costly backpay payouts for the District of Columbia. Additionally, the 90-day time limit

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<sup>5</sup> "36 Fired MPD Officers Reinstated; Receive \$14 Million in Back Pay" Office of the DC Auditor, p.1, <https://dcauditor.org/report/mpd-personnel-settlement-report/> (last visited Feb 4, 2024)

<sup>6</sup> Id, p.14

<sup>7</sup> "36 Fired MPD Officers Reinstated; Receive \$14 Million in Back Pay" Office of the DC Auditor, p. 9, <https://dcauditor.org/report/mpd-personnel-settlement-report/> (last visited Feb 4, 2024).

<sup>8</sup> "36 Fired MPD Officers Reinstated; Receive \$14 Million in Back Pay" Office of the DC Auditor, p.18-19, <https://dcauditor.org/report/mpd-personnel-settlement-report/> (last visited Feb 4, 2024)

in this legislation allows individuals engaged in criminal conduct to avoid any accountability for misconduct through a technical hurdle and one-sided timeline requirement.

The officer discipline process H.R. 5798 would reinstate has proven to be excessively slow, a waste of taxpayer money, and puts officers unfit to serve back in the Metropolitan Police Department.

### **H.R 5798 Creates a Wall of Secrecy and Undermines Public Transparency and Accountability**

This legislation will remove the current requirement for the Metropolitan Police Department to publish on a public website a schedule of adverse action hearings in which the proposed discipline for an officer is termination, including the date, time, and location of the hearing, the name and badge number of the officer, and a summary of the alleged misconduct or charges.

Public access to police misconduct information is a key component of accountability and reduces the likelihood that an individual engaging in criminal behavior or police misconduct can simply resign and join another law enforcement agency. A recent study published in The Yale Law Journal found 800 officers in Florida who were fired, some even for serious misconduct, and were rehired at another police department.<sup>9</sup> Police misconduct records are often inaccessible to the individuals and communities most affected by excessive use of force and police misconduct. H.R. 5798 would remove a critical tool that allows for greater transparency and accountability.

### **Officers with Criminal Conduct and Serious Misconduct Were Reemployed as Metropolitan Police Officers Under the Arbitration System Which H.R. 5798 Will Reinstate**

Examples of individuals fired by the Metropolitan Police Department (MPD) but reinstated under the same arbitration system H.R. 5798 would reinstate include:

#### **Example #1**

“On November 16, 2007, according to MPD and described in the arbitration award, [the officer] saw a young woman crying on a street corner because she couldn’t get into a nearby club with her friends. He picked her up in his MPD vehicle and later took her back to the night club. The woman told the officers outside of the club she had been sexually assaulted by [the officer], who was

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<sup>9</sup> The Wandering Officer The Yale Law Journal - Home, <https://www.yalelawjournal.org/article/the-wandering-officer#:~:text=abstract,of%20%20the%20wandering%20officer%20phenomenon> p. 1771 (last visited Feb 4, 2024)

investigated, arrested, and later found guilty of misdemeanor sexual abuse. He was sentenced to a 100-day suspended sentence, one year of probation, and \$1,000 in court costs and fines. MPD charged [the officer] with conviction of a crime, conduct relating to the discipline and performance of the force, and conduct unbecoming an officer. An Adverse Action Panel found him guilty of the first two charges but not guilty of the third. The panel recommended [the officer] receive an official reprimand. Per MPD, MPD terminated [the officer] on October 23, 2009, despite the panel's recommendation. Additionally, MPD's Final Notice of Adverse Action found that the panel ignored evidence related to the third charge of conduct unbecoming an officer. On January 9, 2015, the termination was overturned through arbitration because of due process and evidentiary issues surrounding the charge of conduct unbecoming an officer. In addition, MPD did not have authority to increase the penalty the panel recommended. On April 24, 2015, PERB sustained the arbitrator's award. On January 8, 2019, D.C. Superior Courts sustained PERB's decision. [the officer] was reinstated on December 10, 2019, and paid backpay equal to \$532,996. Since being reinstated, [the officer] had one instance of misconduct reported by MPD which was stating on a form he had no criminal record, but a background check showed a misdemeanor for prostitution in 2016. [the officer] retired on January 13, 2021."<sup>10</sup>

## **Example #2**

"Prior to being terminated, [the officer] was the subject of one complaint made to the OPC. According to MPD and as described in the arbitration award, [the officer] was arrested on November 21, 2006, for assault, child abuse, reckless endangerment, and confining an unattended child. [the officer] admitted to some of the misconduct, stating, "I beat [them]" when asked about marks on a child's arms. Criminal charges were dismissed in exchange for a guilty plea to one charge, five years of probation, and successful completion of a class related to the treatment of children. MPD issued a notice to terminate [the officer] and charged her with conduct unbecoming an officer and committing a crime. An Adverse Action Panel found [the officer] guilty of all charges but reduced the termination to a 30-day suspension. Per MPD, MPD terminated [the officer] on August 24, 2007, despite the panel's recommendation. On March 6, 2012, the termination was overturned through arbitration because MPD lacked authority to increase the penalty from suspension to termination during the disciplinary process. On November 8, 2012, PERB sustained the arbitrator's award. On June 26, 2014, D.C. Superior Court sustained PERB's opinion. On August 4, 2016, the D.C. Court of Appeals sustained the D.C. Superior Court opinion. [the officer] was reinstated on December 28, 2016, and paid backpay equal to \$723,859. [the officer] retired three years later."<sup>11</sup>

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<sup>10</sup> "36 Fired MPD Officers Reinstated; Receive \$14 Million in Back Pay" Office of the DC Auditor, p.74, <https://dcauditor.org/report/mpd-personnel-settlement-report/> (last visited Feb 4, 2024)

<sup>11</sup> Id, p.49.

### **Example #3**

“Prior to being terminated, [the officer] was the subject of one complaint made to the OPC. A different instance of misconduct, as claimed by MPD and described in the OEA award, occurred on June 24, 2010, when a woman in a grocery store parking lot called police claiming a man was exposing his genitals to women in the parking lot. [the officer] was identified as the perpetrator, found guilty in criminal court, and sentenced to 30 days of incarceration (suspended) and three years of probation. MPD charged [the officer] with conviction of a crime and conduct unbecoming an officer. MPD provided [the officer] a notice that he was going to be terminated, but an Adverse Action Panel recommended a 60-day suspension in lieu of termination. Per MPD, MPD terminated [the officer] on June 30, 2011, despite the panel’s recommendation. On August 18, 2014, the termination was overturned through OEA because the Adverse Action Panel assigned a suspension in lieu of termination and MPD did not have authority to increase the penalty the panel chose. On March 29, 2016, OEA denied MPD’s petition for review and upheld their decision. [the officer] was reinstated December 28, 2016, and paid backpay equal to \$362,461. After reinstatement, [the officer] had three instances of misconduct according to MPD, including crashing an MPD vehicle, not turning on his body worn camera after the crash, and parking in a bike lane.”<sup>12</sup>

### **Example #4**

“On June 13, 2009, according to MPD and described in the arbitration award, [the officer] was arrested for soliciting an undercover officer posing as a prostitute. In exchange for pleading guilty and completing a diversion program, the U.S. Attorney’s Office agreed to drop the case. MPD charged [the officer] with conviction of a crime and untruthful statements. The Adverse Action Panel sustained both charges and recommended termination. Per MPD, MPD terminated [the officer] on July 30, 2010. On March 24, 2017, the termination was overturned through arbitration because of insufficient evidence that [the officer] made an untruthful statement and because MPD exceeded the 90-day time limit to initiate discipline. On August 17, 2017, PERB sustained the arbitrator’s award. Despite being ordered to reinstate [the officer], MPD refused to do so. The FOP brought an unfair labor practices complaint, which PERB upheld on September 27, 2018. The Superior Court upheld the FOP and PERB’s petition for enforcement on July 24, 2019. [the officer] was reinstated on September 10, 2019, and paid backpay equal to \$681,815. [the officer] retired within six months.”<sup>13</sup>

**For these reasons, the ACLU strongly urges you to vote “NO” on H.R. 5798.** If you have any questions, please contact Nina Patel, Senior Policy Counsel, Justice Division at [npatel@aclu.org](mailto:npatel@aclu.org).

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<sup>12</sup> Id, p. 53

<sup>13</sup> Id, p. 54.

Sincerely,



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