

A RESOLUTION

20-711

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 2, 2014

To declare the existence of an emergency with respect to the need to amend, on an emergency basis, the Omnibus Public Safety Agency Reform Amendment Act of 2004 to clarify when the period of time during which the Metropolitan Police Department may commence a disciplinary procedure against an employee begins to run, and to add additional tolling provisions for criminal investigations occurring in any jurisdiction within the United States and investigations by the Office of the Inspector General and the Office of the District of Columbia Auditor; to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 and An Act relating to the Metropolitan police of the District of Columbia to allow the Chief of Police to appoint to command ranks from among the Metropolitan Police Department's lieutenants.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Metropolitan Police Department Commencement of Discipline and Command Staff Appointment Emergency Declaration Resolution of 2014".

Sec. 2. (a) There exists an immediate need to specify the start date of the 90-day timeline for the commencement of discipline at the Metropolitan Police Department ("MPD") and to add additional tolling provisions to ensure the proper discipline of employees who commit misconduct and the proper functioning of the timeline.

(b) Under D.C. Official Code § 5-1031, the MPD and the Fire and Emergency Management Services Department ("FEMS") have 90 business days, after they gain actual or constructive knowledge of an incident of misconduct, to commence a disciplinary proceeding against an employee. However, the timeline tolls if the United States Attorney's Office, MPD, or the Office of the Attorney General is conducting a criminal investigation based on the act or occurrence underlying the department's disciplinary case, or for any investigation into the act or occurrence by the Office of Police Complaints. If the department fails to commence discipline prior to the deadline, the department is barred from later taking disciplinary action against the employee for that conduct. According to MPD, the 90-day rule has resulted in a reversal of discipline in 21 cases since 2004 where the matter went to arbitration or to a hearing examination, and the arbitrator or hearing examiner ruled that MPD violated the 90-day rule; as a result, the discipline could not be enforced, regardless of any determinations as to whether or not the discipline was merited with respect to the employee's conduct.

(c) Because the 90-day timeline begins when MPD “knew or should have known” of the alleged act or occurrence constituting misconduct, there may be, and in fact are, discrepancies between when MPD understood the timeline to begin and when the employee, or arbitrator, understood the timeline to begin. Passage of this emergency act will ensure that all parties know clearly when the timeline begins and ends, and that no more discipline will be unenforceable due to confusion over the start date.

(d) Furthermore, MPD is facing significant shortages with the retirement bubble. The rapid hiring of more than 1,500 officers between 1989 and 1991 created retirement eligibility for 21% of the sworn members of the force in 2015 and 30% by 2017. The percentages are vastly greater among the higher ranks. For example, among management positions (Captain and Lieutenant), 63% will be eligible for retirement in just 3 years; for command staff (Inspector and above), the number of eligible staff jumps to 74%. There may soon be a situation where the Chief will need to fill unusually high numbers of command staff positions. For example, in 2015, 19 of the 31 command staff officers will be eligible to retire. If many command staff positions open up in rapid succession over the next few years, the Chief of Police would have to pick from a dwindling pool of candidates. Several command staff vacancies presently exist, and the need for opening up a larger, more competitive pool of candidates is immediate.

(e) Passage of this emergency act will enable MPD to immediately fill command staff vacancies with the best qualified candidates.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Metropolitan Police Department Commencement of Discipline and Command Staff Appointment Emergency Amendment Act of 2014 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.