

Office of Mayor Arreguin

Note: the original report begins on page 202 of this document.

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: May 24, 2022

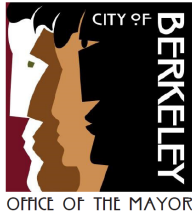
Item Number: 19

Item Description: Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services

Submitted by: Mayor Arreguín and Vice Mayor Harrison

This supplemental proposes an alternative approach to addressing the authors' concern that Council- adopted policy precludes BPD from utilizing the warrantless search provision to search a sex offender on probation or parole.

The recommended language creates a carve out making it clear that policy 311.6 does not apply to registered sex offenders on probation or parole consistent with their special assigned status under California Penal Code 290.



To: Honorable Members of the City Council
From: Mayor Jesse Arreguín and Vice-Mayor Kate Harrison
Subject: Alternative Revisions to Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department Law Enforcement Services Manual

RECOMMENDATION

Amend Section 311.6 Warrantless Searches of Individuals on Supervised Release Search Conditions of the Berkeley Police Department (BPD) Law Enforcement Services Manual **to enable officers of the Berkeley Police Department to conduct detentions and warrantless searches of registered sex offenders on parole/probation consistent with and supportive of the provisions in the probationer's/parolee's release conditions. The proposed language maintains the current policy in Section 311.6 but *adds additional language clarifying that this policy does not apply to registered sex offenders, consistent with their special status under California Penal Code 290.***

See the full proposed language below, additions are shown in underline:

In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a legitimate law enforcement purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion.

Officers shall not detain and search a person on probation or parole solely because the officer is aware of that person 's probation or parole status. The decision to detain a person and conduct a probation or parole search , or otherwise enforce probation or parole conditions, should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime.

Notwithstanding this general policy, consistent with the special status assigned to sex offenders specified in California Penal Code 290, officers may search registered sex offenders on probation or parole as otherwise permissible by law.

BACKGROUND

Process and Rationale for Developing Policy 311.6

On May 11, 2022, the Police Accountability Board (PAB) sent a letter to the City Council (Attachment 1), including background submitted by the PRC subcommittee on Probation and Parole Searches summarized in the September 9th, 2020 packet (Attachment 2). This background was not included in the original item but provides important context as to how and why this policy was formulated.

On April 24, 2018, the Berkeley City Council agreed on consent to “Review and Update BPD Policy Surrounding Inquiries to Parole and Probation Status” triggering a review of these policies by the Police Review Commission (PRC). Policy 311, Section 311.6 was the product of 18 months of work and collaboration between the former PRC and the Berkeley Police Department. The policy was later adopted by the Police Department and later affirmed by the Mayor’s Working Group on Fair and Impartial Policing and the Council as part of its acceptance of the Fair and IMpartial Policing Working Group’s report. The PRC gathered evidence, reviewed the legal and scholarly literature, and received input from practitioners and experts, including the Alameda County Assistant Chief of Probation.

The PRC initially recommended differentiating between violent and non-violent offenders, similar to Oakland’s policy. However, this approach was deemed too burdensome by BPD and thus Chief Greenwood proposed the language that was ultimately adopted by BPD with the support of the PRC (Attachment 3).

Concerns with Policy Committee Recommendation

The proposal to revise Section 311.6 does not adequately consider the original purpose, process, and concerns that led to the creation of this policy narrowing the scope of warrantless searches by the Berkeley Police Department. The April 24, 2018, Council Action was in response to the PRC’s report to “Achieve Fairness and Impartiality”. The reason for initiating this policy change was concern that suspicionless searches of persons who are on supervised release are a factor contributing to racial disparities. The disparate impacts of this policy are in part a result of the upstream systemic racism in our criminal justice system. Blacks and Latinxs are 71% of Alameda County’s probationers making people of color disproportionately impacted by a change to this policy. Any change to this policy needs to contend with the broader racial disparate impact of its implementation.

Policy 311.6 does not prohibit searches of individuals on supervised release, just *suspicionless searches*, a critical distinction. The reasonable suspicion standard is a lower threshold, not “nearly equal” to the standard of probable cause required to search an individual that is not on probation or parole. Additionally, a non-parolee can only be searched in a much more restricted manner, a pat-down, whereas a probationer/parolee can be subjected to a much more invasive search.

Berkeley is not alone in restricting these types of searches. Oakland has a policy, General Order R-02 that limits warrantless searches of individuals and distinguishes between violent and

non-violent offenders. Moreover, California is one of only nine states that allows these types of searches at all. It is not clear that Berkeley will be safer or achieve more equitable policing outcomes by adopting the policy committee recommendation.

The Supreme Court has long affirmed the application of 4th Amendment protections to people of all statuses, including supervised release, absent individualized suspicion (See *Griffin v. Wisconsin* [1987]; *U.S. v. Knight* [2001]). Deviating from this principle, the Court in *Samson v. California* (2006) found California's practice of police searches of people on supervisory release to be constitutionally permissible, given California's interest in suppressing its high recidivism rate. However, legal scholars argue that the *Samson* opinion is a radical departure from precedent and violates the constitutional protections of the 4th Amendment, and criminologists note that law enforcement's ability to do random searches of people on supervised release has not reduced California's recidivism rate. In fact, the City Council has received letters from distinguished scholars expressing deep concern for revising the policy to allow suspicionless searches.

Vincent Southerland, Assistant Professor of Clinical Law and Co-Faculty Director of the Center on Race, Inequality and the Law at the New York University School of Law, noted that California's policy was upheld by the Supreme Court in *Samson v. California* based on the assumption that suspicionless search of people on supervised release would reduce California's above average recidivism rate (Attachment 4). This decision is contrary to the spirit of the Fourth Amendment that safeguards from unreasonable searches and seizures by the government apply to all people, regardless of race, sex, national origin or criminal status.

On May 22, 2022 the City Council received a letter from Erwin Chemerinsky, Dean and Jesse H. Chopper Distinguished Professor of Law at the University of California, Berkeley School of Law, perhaps the most respected constitutional scholar in the country, urging the City Council to retain the current policy. Chermerinsky notes the danger of allowing police to stop individuals without at least having reasonable suspicion, and that in his view, California's permission of suspicionless stops, and thus the proposed revision back to that standard, likely violates the Fourth Amendment (Attachment 5).

RATIONALE FOR RECOMMENDATION

We are in agreement with many of the points laid out in the letter from the PAB. There is no compelling evidence to support a complete rollback of Section 311.6. In particular, such a rollback could set back important progress toward fair and impartial policing.

However, given the unique concerns surrounding sex offenders, we are compelled to have a carve-out that waives the applicability of Policy 311 Section 311.6 with respect to registered sex offenders on probation or parole.

ALTERNATIVES CONSIDERED

The City Council could refer the policy back to the Police Accountability Board for a more thorough discussion on the legal and public safety considerations. This process could unpack

the role of probation and parole officers, as well as their capacity to enforce the release conditions of their clients.

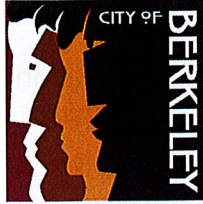
Alternatively, the City Council could adopt a standard in place in Alaska and North Carolina, which only allow warrantless searches of individuals on supervised release at the request of their probation or parole officer.

FINANCIAL IMPLICATIONS

Asking officers to supplement the duties of Parole and Probation Officers can drive up costs and stretch police staff time that is already thin.

Attachments:

1. May 11, 2022, Police Accountability Board Letter
2. September 9, 2020, Police Review Commission Agenda Packet
3. September 23, 2020, Police Review Commission Agenda Packet
4. May 9, 2022, Letter from Vincent Southerland, Assistant Professor of Clinical Law and Co-Faculty Director of the Center on Race, Inequality and the Law at the New York University School of Law
5. May 22, 2022, Letter from Erwin Chemerinsky, Dean and Jesse H. Chopper Distinguished Professor of Law at the University of California, Berkeley School of Law



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

May 11, 2022

To: Honorable Mayor and Members of the City Council

From: Michael Chang, Chairperson, Police Accountability Board

Re: Revisions to Berkeley Police Department Policy 311, Section 311.6, *Warrantless Searches of Individuals on Supervised Release Search Conditions* – agendized for the May 24, 2022 City Council meeting

The Police Accountability Board (PAB) has evaluated the proposal from Councilmembers Droste and Taplin to modify Berkeley Police Department (BPD) Policy 311, Section 311.6, *Warrantless Searches of Individuals on Supervised Release Search Conditions*, and voted unanimously to support retaining the current version of Section 311.6.

Policy 311, *Search and Seizure*, was the product of 18 months of work and collaboration between the former Police Review Commission (PRC) and the BPD. The policy was later incorporated into the Mayor's Working Group on Fair and Impartial Policing recommendations that Council passed on February 23, 2021. The PRC gathered evidence, reviewed the legal and scholarly literature, and received input from practitioners and experts, including the Alameda County Assistant Chief of Probation. The following summarizes the information gathered by the PRC and, subsequently, by the PAB.

- **California is one of only nine states that allow police officers without limitation to search individuals on community supervision.** A divided U.S. Supreme Court decision issued in 2006, *Samson v. California*, did not find the practice unconstitutional, and it remains part of the state Penal Code. That said, Berkeley's current policy brings it closer to that of most other jurisdictions in the United States.
- **In 2015, the U.S. Supreme Court in *Rodriguez v. United States* found that police officers may not prolong traffic stops absent reasonable suspicion longer than necessary to process the traffic infraction.** Given the longstanding value that Berkeley places on constitutional policing, the City will want to ensure that its probation and parole search practices subsequent to traffic stops are consistent with *Rodriguez*.
- **Probationers and parolees are subject to search by their Probation and Parole Officers (PO's), who classify their clients according to risk**

Honorable Mayor & Members of the City Council
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assessments. Those at high risk of re-offending are subject to intensive supervision and search by their PO's. The California Division of Adult Parole Operations subject sex offenders and other "special cases" to the highest level of supervision and search by their PO's.

- **The reasonable suspicion standard in Policy 311.6 is a relatively low threshold.** At a recent training conducted for PAB members, BPD training officers underscored the distinction between "reasonable suspicion" and "probable cause," and provided examples of the relatively low level of suspicion currently required to conduct a parole and probation search.
- **Probationers and parolees in California are disproportionately people of color, with 71% of Alameda County probationers either Black or Latinx people.** They are therefore disproportionately subject to these searches.
- **The empirical evidence suggests that police officer parole and probation searches are not associated with crime reduction.** Of the nine states that allow unlimited probation and parole searches by police officers, six have crime rates higher than the national average. In Berkeley, Part One violent crimes were down slightly from 2020, while property crimes increased by 2.2%. This increase in Berkeley's crime rate in 2021 is lower than in jurisdictions that allow these police searches. For example, in neighboring San Francisco, overall crime was up 12.8% and in Richmond 9%. The Pew Charitable Trust, in a 2020 report of its Public Safety Project, found from their exhaustive review of available research that intensive probation and parole interventions and searches are not correlated with reduced crime.
- **Evidence also suggests that allowing police officers to do suspicionless probation or parole searches does not reduce recidivism.** The average 3-year recidivism rate across the United States is 39%. Five of the nine states that allow police officers unlimited searches of people on probation or parole have rates higher than that, with California's 50% rate substantially higher than average.
- **Evidence suggests these searches are not cost effective.** They take time from police officers to supplement the duties of Parole and Probation Officers during a period of already costly police overtime. Further, they may uncover technical violations of parole or probation, with related cost increases. Nationally, 30-40% of state prison admissions are for technical violations of probation or parole conditions, such as traveling more than 50 miles from home or violating curfew. Nationwide, states spend about \$3.1 billion annually to re-incarcerate people for technical probation or parole violations. The Pew Charitable Trust Report concluded that subjecting low-risk individuals to intensive supervision "drives up costs and runs counter to what the evidence recommends."
- **There is no evidence that intensive supervision of probationers and parolees facilitates rehabilitation.** A *Washington Post* article last year summarized Pew's Public Safety Project, "A supervision system meant to encourage rehabilitation outside of prison often stands in the way of its own goal." This is in part

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because of the message of disrespect that these suspicionless searches send. Further, as Prof. Michelle Phelps suggests in her Princeton University dissertation, even the brief periods of incarceration associated with technical violations “cause enough disruption to destabilize family relationships and employment,” which are critical for rehabilitation.

In sum, the evidence suggests that allowing police officers to search individuals on supervisory release without suspicion does not reduce crime, is associated with higher recidivism, drives up costs, and may be an obstacle to rehabilitation. And, since people of color are more likely to be on probation or parole, they are more likely to be subject to these searches.

The PRC originally recommended the current Section 311.6 of Policy 311 based on these empirical data, and it is in its commitment to evidence-based policing that the PAB unanimously and respectfully recommends retention of this policy. The vote to send a letter to the Council recommending against the proposed change to Section 311.6 and keeping the policy as is, was made at the PAB’s April 13, 2022 meeting. Moved/Second (Calavita/Leftwich): Ayes – Calavita, Chang, Harris, Leftwich, Levine, Mizell, Moore, Owens, and Ramsey; Noes – None; Abstain – None; Absent – None.

cc: Jennifer Louis, Interim Police Chief
Police Accountability Board Members



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May 9, 2022

City Council
City of Berkeley
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Dear Berkeley City Council Members,

I am writing in light of your consideration of Berkeley Police search policy which currently requires that officers have reasonable suspicion to justify a search of a person on probation or parole. I was disheartened to learn that the Berkeley City Council is considering a rollback of policies meant to curtail the suspicionless search of people on supervision by Berkeley Police. Given the serious implications of these practices on Fourth Amendment rights and racial equity, I strongly urge City Council to leave the current limits on police authority in place.

I am an Assistant Professor of Clinical Law and co-Faculty Director of the Center on Race, Inequality, and the Law at the New York University School of Law. My expertise centers on the intersection of race and the criminal legal system, as well as criminal law and procedure. Prior to joining NYU School of Law, I was an Assistant Federal Defender with the Federal Defenders for the Southern District of New York, where I represented individuals in federal criminal proceedings and during post-conviction supervised release. My time as a federal defender was preceded by nearly a decade at the NAACP Legal Defense and Educational Fund and several years as a state public defender in New York.

The Fourth Amendment safeguards our fundamental right to be secure from unreasonable searches and seizures by the government.¹ It ensures that law enforcement cannot intrude upon our privacy without at least individualized, reasonable suspicion. This basic requirement is “the shield the Framers selected to guard against the evils of arbitrary action, caprice, and harassment.”² The Fourth Amendment’s safeguards apply to all people, regardless of race, sex, national origin, or for that matter, criminal status. As the Supreme Court has long recognized, people on supervised release, just like any other class of people, merit the Fourth Amendment’s protections.³

¹ “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” CONST. AMEND. IV

² *Samson v. California*, 547 U.S. 843, 866 (Stevens, J. dissenting).

³ See *United States v. Knight*, 534 U.S. 122 (2001) (holding that there must still be reasonable suspicion of wrongdoing to justify warrantless search of people on supervised release); *Griffin v. Wisconsin*, 483 U.S. 868, 876-77 (1987) (holding that warrantless searches carried out by probation officers as part of individualized counseling and monitoring may give rise to special needs justifying departure from the Fourth Amendment’s strictures); *c.f. Samson*, 547 U.S. 843 (2006).

Yet, contrary to the spirit of the Fourth Amendment, California is one of only nine states to allow warrantless, suspicionless searches by law enforcement of those on probation or parole.⁴ Although California's arcane policy was upheld by the Supreme Court in *Samson v. California*,⁵ the state's justifications for the measure emanated from the assumption that the suspicionless search of people on supervised release would reduce California's above-average recidivism rate. This assumption was flawed in 2006, when *Samson* was decided, and remains erroneous today. In *Samson*, the Court overlooked the fact that California's recidivism rate was driven by the state's system-wide failure to provide people in prison with vocational education, mental health treatment, and related services upon release,⁶ combined with "lockup quotas" that perversely incentivized the violation of parolees to fill bed space in the state's prisons.⁷ These shortcomings resulted in California returning more people on supervised release to its custody than in 39 states combined.⁸ As recently as 2019, the state has admitted its failure to adequately support the re-entry of people in its custody.⁹ The suspicionless search of people on supervised release bolsters the falsehood that people on supervised release are inherently suspicious and therefore less entitled to the law's fundamental protections. Such policies vest police with the sort of unbridled authority that resulted in a national outcry over policing in the wake of George Floyd's death.

In response to that outcry, the Berkeley City Council made significant strides to promote racial justice within its criminal legal system. Among the policies adopted were measures restricting law enforcement's ability to inquire about a person's supervised release status and limiting warrantless searches of people on supervised release to only those instances where there are "articulable facts that create a reasonable suspicion" that the individual was involved in criminal activity.¹⁰ The regulation restored the protections enshrined in the Fourth Amendment—that touchstone requirement for government searches to be based not on a person's status, but on some individualized, reasonable suspicion of wrongdoing.

⁴ See Cal. Penal Code Ann. § 3067(a) (West 2000).

⁵ *Samson*, 547 U.S. 843 (2006).

⁶ W. David Ball, *Mentally Ill Prisoners in the California Department of Corrections and Rehabilitation: Strategies for Improving Treatment and Reducing Recidivism*, 24 J. of Contemporary Health Law & Policy 1.2 (2007), Marvin Mentor, *Supreme Court: California's Law Permitting Suspicionless Police Search of Parolees Does Not Violate Fourth Amendment*, Prison Legal News (June 15, 2007), <https://www.prisonlegalnews.org/news/2007/jun/15/supreme-court-californias-law-permitting-suspicionless-police-search-of-parolees-does-not-violate-fourth-amendment/> (detailing how California prisons failed to adequately screen inmates for mental illness during intake, offer special programming or housing, provide basic treatment, and to address special needs upon release, resulting in "mentally ill prisoners get sicker, stay longer, suffer more, and wind up back in prison soon after their release."); Opinion, *California Reinvents the Wheel*, N.Y.T. (Apr. 16, 2004), <https://www.nytimes.com/2004/04/16/opinion/california-reinvents-the-wheel.html> (noting that despite California laws requiring that people be provided remedial education while in prison, fewer than 10% of prisoners were enrolled in academic programs).

⁷ Marvin Mentor, *Supreme Court: California's Law Permitting Suspicionless Police Search of Parolees Does Not Violate Fourth Amendment*, Prison Legal News (June 15, 2007), <https://www.prisonlegalnews.org/news/2007/jun/15/supreme-court-californias-law-permitting-suspicionless-police-search-of-parolees-does-not-violate-fourth-amendment/>; see also *Criminal: How Lockup Quotas and "Low-Crime Taxes" Guarantee Profits for Private Prison Companies*, In the Public Interest (Sept. 2013), <https://www.inthepublicinterest.org/wp-content/uploads/Criminal-Lockup-Quota-Report.pdf>

⁸ Mentor, *supra* note 7.

⁹ California Dept. of Corrections and Rehabilitation, *Several Poor Administrative Practices Have Hindered Reductions in Recidivism and Denied Inmates Access to In-Prison Rehabilitation Programs*, Report 2018-113 (Jan 2019), <https://www.bsa.ca.gov/pdfs/reports/2018-113.pdf>.

¹⁰ Berkeley Police Department Law Enforcement Service Manual § 311.6

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In passing these reforms, City Council acknowledged that California's authorization of suspicionless searches aggravated racial disparities endemic to the criminal legal system. Black, Latinx and other people of color are disproportionately policed and prosecuted, and therefore—predictably—more likely to end up on supervised release. Although Black Californians make up less than 8% of the general population, they represent 22.9% of those on state supervised release.¹¹ Black people who often live in heavily policed neighborhoods are also more likely to be stopped by law enforcement. The Berkeley Police Department's own data reveals that Black residents are not only more likely to be stopped than white residents, but also four times more likely to be searched following a traffic stop.¹² By restoring law enforcement authority to search Berkeley residents on the sole basis of their supervision status, the contemplated rollbacks invite gratuitous and discriminatory police contact, which in turn threatens to compound these stark racial disparities and undermines community well-being.

Restoring Fourth Amendment protections to people on supervised release made Berkeley stand out as a beacon committed to advancing racial equity and civil rights. Rolling back this progress would be a grave step in the wrong direction.

Sincerely,



Vincent Southerland
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Director, Criminal Defense and Reentry Clinic
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cc: Mayor Jesse Arreguín

¹¹ Mia Bird, Justin Goss, Viet Nguyen, *Recidivism of Felony Offenders in California*, Public Policy Institute of California, (June 2019), <https://www.ppic.org/wp-content/uploads/recidivism-of-felony-offenders-in-california.pdf>.

¹² Malini Ramaiyer, *Berkeley police stop and search Black residents more often*, *Police Review Commission finds*, THE DAILY CALIFORNIAN (March 12, 2018), <https://www.dailycal.org/2018/03/12/berkeley-police-stop-search-black-residents-often-police-review-commission-finds/>.

May 22, 2022

Mayor Jesse Arreguin
Members of the Berkeley City Council
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Re: Proposal to revise Berkeley Police Department Policy 311, Section 311.6

Dear Mayor Arreguin and Members of the Berkeley City Council,

I understand that the Berkeley City Council is scheduled to consider, at its meeting on May 24, a proposal to revise Berkeley Police Department Policy 311, Section 311.6, *Warrantless Searches of Individuals on Supervised Release Search Conditions*. I am writing to urge that you retain the current policy, which requires “reasonable suspicion” for individuals on probation and parole.

I am Dean of the University of California, Berkeley School of Law and the Jesse H. Choper Distinguished Professor of Law. I regularly teach a course on policing and the Fourth Amendment, Criminal Procedure: Investigations. My most recent book – *Presumed Guilty: How the Supreme Court Empowered the Police and Subverted Civil Rights* (Liveright 2021) – focuses on this topic.

The current Berkeley policy requires that the police have reasonable suspicion before searching those who are on probation and parole. This is not a demanding standard, but it is one that requires some basis before a police officer can stop and search a person who is on probation or parole. The Supreme Court has explained that reasonable suspicion requires more than a hunch, but less than probable cause.

Every police search is degrading and stressful. Each has the possibility of escalating. Moreover, countless studies have shown the danger of allowing police to stop individuals without at least having reasonable suspicion: the power often is used in a racially discriminatory manner. In the case of probation and parole searches, this is inevitable since the vast majority of those on probation or parole in California are people of color.



Nor is there any evidence that allowing suspicionless stops enhances effective law enforcement. Indeed, many studies conclude that intensive probation and parole searches are not correlated with a decrease in crime.

California is one of the few states that allows police to search individuals on community supervision without a requirement for reasonable suspicion. I believe that this likely violates the Fourth Amendment, despite the Supreme Court's finding in *Samson v. California*.

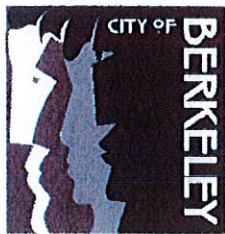
Therefore, I urge the City Council to retain the current policy. The police only should be able to search a person if there is at least reasonable suspicion. Eliminating this requirement will do little to enhance public safety, but it will cause great harms and is likely unconstitutional.

Thank you for considering my views.

Sincerely,

s/

Erwin Chemerinsky



Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING**

**Wednesday, September 23, 2020
7:00 P.M.**

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY
THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, this meeting of the City of Berkeley Police Review Commission will be conducted exclusively through teleconference and Zoom videoconference and there will not be a physical meeting location available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/87070468124>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen.

To join by phone: Dial 1 669 900 6833 and enter Meeting ID 870 7046 8124. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

AGENDA

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the PRC's jurisdiction at this time.)

- 4. APPROVAL OF MINUTES**

Regular meeting of September 9, 2020.

5. CHAIR'S REPORT

Report on Mayor's Workgroup; other items.

6. PRC OFFICER'S REPORT

Status of complaints; report on NACOLE Conference; other items.

7. CHIEF OF POLICE'S REPORT

Crime, budget, staffing, training updates, other items.

8. SUBCOMMITTEE REPORTS (discussion and action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

a. Police Acquisition & Use of Controlled Equipment

9. OLD BUSINESS (discussion and action)

a. Berkeley Police Department policies on questioning the supervised release status of detainees and conducting subsequent searches, including consideration of BPD's response to PRC's recommendation on searches passed on February 5, 2020.

10. NEW BUSINESS (discussion and action)

a. Review and make recommendation to the City Council regarding a revised tear gas policy, to allow use by the Special Response Team in certain circumstances.

From: Use of Force Subcommittee

11. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda at this time.)

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter(s):

12. PRESENTATION OF ADMINISTRATIVE CLOSURE IN COMPLAINT #2474

End of Closed Session

13. ANNOUNCEMENT OF CLOSED SESSION ACTION

14. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary via email for further information. City offices are currently closed and cannot accept written communications in person.



Communication Access Information (A.R.1.12)

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

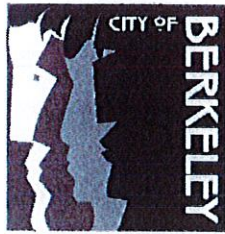
SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public by being posted on the Police Review Commission's web page within three business days of the meeting.

Contact the Police Review Commission at prc@cityofberkeley.info.

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PRC REGULAR MEETING ATTACHMENTS
SEPTEMBER 23, 2020

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9-22-20 Action Calendar Item submitted by Chief of Police: 2019 Crime Report and Five Year Use of Force Report.	Page 29
RFP Specification No. 21-11413 for City of Berkeley Police Re-imagining Proposals.	Page 45
2020 PRC Annual Commission Attendance Report.	Page 69
9-11-20 Email re Notice of Upcoming Public Hearing on the MHSA FY2020/2021 – 2022/2023 Three Year Plan.	Page 71
9-4-20 Email from the BPD Chief: Emailing – Racially biased policing – Can it be fixed?	Page 73
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9-8-20 Opinion from New York Times: Is it Possible to Reform the Police.	Page 89



Police Review Commission (PRC)

DRAFT

**POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(draft)**

**Wednesday, September 9, 2020
7:00 P.M.**

No physical location; meeting held exclusively through videoconference and teleconference.

1. CALL TO ORDER & ROLL CALL BY CHAIR CALAVITA AT 7:03 P.M.

Present: Commissioner Kitty Calavita (Chair)
Commissioner Nathan Mizell (Vice-Chair) (left 8:40 p.m.)
Commissioner Michael Chang
Commissioner Juliet Leftwich
Commissioner Elisa Mikiten
Commissioner George Perezvelez (arrived 7:40 p.m.)
Commissioner Ismail Ramsey

Absent: Commissioner Gwen Allamby

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Chief Andy Greenwood, Capt. Rico Rolleri, Lt. Dan Montgomery

2. APPROVAL OF AGENDA

Motion to postpone Item #9.a. until the next meeting
Moved/Second (Calavita/Ramsey) Motion Carried
Ayes: Calavita, Chang, Leftwich, Mikiten, Mizell, Ramsey.
Noes: None **Abstain:** None **Absent:** Allamby, Perezvelez

The remainder of the agenda was approved by general consent

3. PUBLIC COMMENT

There were no speakers.

4. APPROVAL OF MINUTES

The Regular Meeting Minutes of July 22, 2020 were approved by general consent.

5. CHAIR'S REPORT

-- Mayor's Working Group on Fair & Impartial Policing continues to meet. Next meeting is Sept. 16; meetings are open to the public. Some of the members have developed a package of recommendations and BPD has prepared responses. Working Group has asked to extend its work from mid-Sept, to mid-Oct. of this year.

6. PRC OFFICER'S REPORT

-- No new complaints filed since the last PRC meeting. Board of Inquiry held last Friday [two Fridays ago] and another BOI set for next week. Thanks to Commissioners who have served and will serve.

-- Upcoming Council items of interest on Sept. 15: 1) Councilmember Robinson's "No Revolving Door" proposal, to prevent hiring officers with records of serious misconduct, modified at PRC's suggestion; and 2) vote of no confidence in Police Chief.

-- On Council's Sept. 22 agenda is BPD's crime report (per Chief Greenwood, delayed 2019 crime report, updated 2020 report, and first annual use of force report, covering 2015 – 2019).

-- RFP for the consultant to manage the community engagement process for reimagining public safety has been published; available at www.cityofberkeley.info/rfp.

-- Items in agenda packet to note:

-- Applications sought for candidates for Redistricting Commission;

-- Clerk's email reminder that commissions can't take positions on candidates or measure, but individual commissioners may, as long as they make clear they are doing so in their personal capacity, not on behalf of Commission.

-- Mental Health Services Act proposed plan now open for comment.

7. CHIEF OF POLICE'S REPORT

Crime, budget, staffing, training updates, other items.

-- Hiring freeze in place. Currently 165 sworn. Capt. Ed Spiller and Sgt. Cesar Melero retired; promotions happening behind that. Ofcs. Rego, Perkins, and Kleppe will be promoted to Sgt. Chair Calavita will serve on interview panel for candidates for captain.

-- Downtown taskforce transitioning into bike patrol, for which 10 officers are in training. Will patrol downtown and Telegraph areas. Want to train and equip a cadre of 20 officers for use in operations, community engagement, and support 1st Amendment assemblies and demonstrations.

-- Staff tested 2 different software solutions for data collection required by RIPA (Racial Identity & Profiling Act). Chose one tool; being configured, and aim to go live Oct. 1. For every stop will code 20+ pieces of data. Long awaited and will inform conversations about policing. Can do demonstration for PRC if desired.

- As noted, presenting crime report and UOF report to Council Sept. 22. Can also present for PRC after that, if desired.

-- Sgt. Robert Rittenhouse selected to replace Sgt. Melero, joining Sgt. Cummings in Internal Affairs.

-- Sent out link to community video re the officer-involved shooting. Will release IA and OIS investigations to public when done; likely end of September.

8. SUBCOMMITTEE REPORTS (discussion and action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Police Acquisition & Use of Controlled Equipment. Subcomm. Chair Mizell reported they've been meeting weekly and hope to have recommendation to PRC at its next meeting.
- b. Outreach Subcommittee. Comm. Mikiten reported on rethinking approach after listening to a NACOLE session on community engagement. But will wait to convene when Controlled Equipment Subcomm is done, due to overlap of 2 members.
- c. Lexipol Policies Subcommittee. PRC Officer asked Chief about staffing; he suggested when Controlled Equipment Subcomm. is done. (Also 2-commissioner overlap). Chief also mentioned overlap with his staff on Mayor's Working Group.

9. OLD BUSINESS (discussion and action)

- a. Berkeley Police Department policies on conducting searches of detainees on probation or parole: consider BPD's response to PRC's recommendation passed on February 5, 2020.
(Postponed to the next meeting.)

10. NEW BUSINESS (discussion and action)

- a. Review draft PRC Work Plan for 2020-2021.

Motion to approve the 2020-2021 Work Plan with a revision on p. 3, to state that review of the conversion of BPD General Orders into Lexipol policies should be completed this fiscal year.

Moved/Second (Mikiten/Chang) **Motion Carried**

Ayes: Calavita, Chang, Leftwich, Mikiten, Mizell, Perezvelez, and Ramsey.

Noes: None

Abstain: None

Absent: Allamby

- i) Review latest update of tasks and decide whether to update.

By general consent the Commission: added review of revised tear gas policy as a priority; deleted the BUSD shelter-in-place directive and media credentialing items; updated the probation/parole item to show BPD response has been received.

- b. **Policy complaint #2475:** Consider whether to accept the complaint, regarding conditions and alleged illegal activity around Ashby Avenue near Shellmound and Bay Streets, and determine how to proceed.

Motion to have staff inform the policy complainant that, upon discussion, the PRC did not see that the complaint raises a policy matter, but an enforcement matter, and therefore suggest that the complainant reach out to the BPD to report specific criminal incidents, and inform the complainant that he has the option of following up with a letter to his councilperson.

Moved/Second (Mikiten/Perezvelez) **Motion Carried**

Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez, and Ramsey.

Noes: None Abstain: None Absent: Allamby, Mizell

11. PUBLIC COMMENT

There were no speakers.

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter(s):

12. INFORMAL COMPLAINT FILED AUGUST 9, 2020 REGARDING INCIDENT OCCURRING AUGUST 5, 2020, AT A UNIVERSITY AVENUE BUSINESS.

Motion to ask staff to send one further email follow-up, to ask the complainant if they have obtained any further information or identify the source of the video; and to offer that we forward their email to the Chief, if they wish.

Moved/Second (Leftwich/Perezvelez) **Motion Carried**

Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez, and Ramsey.

Noes: None Abstain: None Absent: Allamby, Mizell

End of Closed Session

13. ANNOUNCEMENT OF CLOSED SESSION ACTION

The Chair reported that the Commission voted to have PRC staff follow up with an email to the informal complainant

14. ADJOURNMENT

By general consent, the meeting was adjourned at 9:07 p.m.

Lee, Katherine

From: Greenwood, Andrew
Sent: Tuesday, September 8, 2020 7:40 PM
To: Lee, Katherine
Subject: Probation and Parole Doc
Attachments: BPDProbationParoleQuestion.docx; BPDProbationParoleSearch.docx

Ms. Lee,

Attached are our responses/proposals regarding Probation and Parole Searches.

The "Question" document has some revisions for emphasis.

The "Search" document is our proposal regarding probation and parole searches.

Comments are contained in both.

I look forward to seeing you tomorrow night.

Andrew Greenwood
Chief of Police
Berkeley Police Department
(510) 981-5700

Sept. 23, 2020

Probation and Parole Searches

BPD Proposal Response regarding warrantless searches

This language is proposed to ensure probation or parole searches are not arbitrary, capricious or harassing, and to prohibit conducting a probation or parole search *solely* because a person is known to be on probation or parole. Probation or parole searches are to be made in connection with a specific law enforcement purpose.

Collecting RIPA data will support analysis of the conducting of probation or parole searches and the results of the searches.

Warrantless Searches of Individuals on Supervised Release Search Conditions.

In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation.

Officers shall only conduct probation or parole searches to further a legitimate law enforcement purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion.

Officers shall not detain and search a person on probation or parole solely because the officer is aware of that person's probation or parole status.

The decision to detain a person and conduct a probation or parole search, or otherwise enforce probation or parole conditions, should be made in connection with a specific investigative purpose, e.g. investigating an apparent stay-away order probation violation; detaining a person on probation for theft where they appear to be prowling or casing property; or detaining a person on parole for burglary in an area where burglaries are occurring, etc.

Sept. 23, 2020

~~Asking the Probation or Parole Question~~

~~Policy recommendation approved by the PRC Dec. 11, 2019~~

~~Provided for information only Sept. 9, 2020.~~

BPD Proposal Response regarding asking a person if they are on probation or parole

Upon further review and consideration, this re-ordered and revised language directly addresses the issue of asking the “probation or parole” question as a matter of routine, and emphasizes the concern of how people may take offense at being asked the question.

Asking a Person if they are on Probation or Parole.

In an effort to foster community trust, officers shall not ask as a matter of routine if a person is on probation or parole when a person has satisfactorily identified themselves, either verbally or by presenting identification documents. If an officer needs to ask the question, “Are you on probation or parole?” the officer should do so while treating the person with dignity and respect, and being mindful that people may take offense at the question.

Officers may determine probation or parole status through standard records checks conducted in the course of a traffic safety or investigative stop.

Officers should only ask when necessary to: 1) protect the safety of others, the person detained, or officers; 2) further a specific law enforcement investigative purpose (for example, sorting out multiple computer returns on common names); or 3) to confirm probation and parole status subsequent to a records check.

to Sept. 23, 2020

Probation and Parole Searches

Policy recommendation approved by the PRC Feb. 5, 2020

Searches of individuals on supervised release shall only be conducted based on the totality of the circumstances, as indicated below.

Non-Violent Offenses. When officers contact a person on supervised release for a non-violent offense during a vehicle, bicycle or pedestrian stop and there are no articulable facts that demonstrate the individual is connected in some way to criminal activity, or that the person is a threat to officers or others, officers shall not conduct a search of that person and/or their vehicle pursuant to any supervised release search clauses or conditions.

“Non-violent offenses” are offenses in which violence, the threat of violence, or the use of a weapon is not a factor. Examples include possession of controlled substances or property crimes such as petty theft and burglary.

Violent Offenses. Notwithstanding the above, persons contacted or detained who are on supervised release for violent offenses may be searched pursuant to the terms of their supervised release conditions.

“Violent offenses” involve the use of force, the threat of force, the use or possession of a weapon, sexual violations against the person of another, human trafficking, robbery, and first-degree burglary.

The motion included an understanding that the Police Department is encouraged to return with proposed revisions by the PRC’s March 25, 2020 meeting.

Searches of Individuals on Probation, Parole or Other Supervised Release Status

Sept. 23, 2020

Submitted by the PRC Subcommittee on Probation and Parole Searches

Background

In California, three types of warrantless searches are permitted by law: searches justified by reasonable suspicion of criminal activity; consent searches; and, "Fourth Waiver" searches. The latter refer to searches of the person or property of people on parole, probation, Post Release Community Supervision (PRCS), or other supervised release status. There are a few differences among these statuses: for example, parolees are subject to search as a result of state law, and people on probation are often required by the judge as a condition of their probation to submit to search. However, the differences are not relevant here and we will refer to all these statuses as "Supervised Release."

California is one of only nine states that allow police officers to do suspicionless searches of those under supervised release (two other states allow it if there is a request from a parolee's or probationer's supervising officer). California's neighboring states of Nevada and Oregon prohibit such suspicionless searches.

California was the first state to insert a provision in its penal code allowing warrantless searches of parolees, with Section 3067 in 1996 requiring parolees to agree to be subject to warrantless searches as a condition of their parole. Historically, many court cases are pertinent to the topic. In 1987, the U.S. Supreme Court in Griffin v. Wisconsin specified that only a Probation Officer could conduct warrantless searches of a probationer and based their decision on the "special needs" of Probation Officers for close supervision of their charges. In 1998, the California Supreme Court in People v. Reyes held that suspicionless searches of parolees by police officers do not violate the Fourth Amendment. In 2001, the U.S. Supreme Court held in U.S. v. Knights that the warrantless search of a probationer's apartment by a police officer, based on reasonable suspicion, was constitutional. It was not until 2006 that the U.S. Supreme Court validated suspicionless searches of parolees or probationers by any law enforcement officer day or night. The only law enforcement restriction in Samson v. California is the continued prescription against "arbitrary, capricious, or harassing searches." In that case, Justice Clarence Thomas wrote the opinion sanctioning what dissenter Justices Stevens, Souter and Breyer called "an entirely suspicionless search unsupported by any special need."

In sum, BPD officers' suspicionless searches of individuals on supervised release is consistent with current law, unless the searches are "arbitrary, capricious, or harassing."

There is concern, however, that entirely suspicionless searches of persons who are on supervised release are a factor contributing to racial disparities. The fact that Whites who are searched by the BPD are *more* often found to be engaged in criminal activity than are Blacks or Latinos suggests that people of color may be more likely than Whites to be asked whether they are on probation or parole and therefore potentially subject to Fourth Waiver searches and/or that a higher standard of suspicion is

being exercised for Whites. Either way, the result is that Blacks and Latinos are disproportionately subjected to searches, the yield rate of which is disproportionately low.

At their April 24, 2018 City Council meeting, the Berkeley City Council agreed on consent to “Review and Update BPD Policy Surrounding Inquiries to Parole and Probation Status” as per the PRC 2017 Report “To Achieve Fairness and Impartiality,” and asked the City Manager and BPD to review those policies. While there appears to have been no concrete action on that front, this Subcommittee represents an effort to proceed.

It is noteworthy that as this Subcommittee initiated its proceedings, the Oakland Police Department had opened similar discussions, collaborating with the Oakland Police Commission to develop new policies relating to asking about one’s supervised release status and subsequent searches of those on supervised release. In July 2019, the Oakland City Council unanimously passed the Oakland Police Commission’s recommended policy changes restricting these questions and searches.

Proposed Policy Changes

(changes in Italics)

- 1. Inquiring about Supervised Release Status.** When a police officer inquires of an individual, “Are you on probation or parole?”, it potentially opens the door for a suspicionless search as described above. It also sends a message: in communities of color, the question signals that the police believe the person may have committed crimes for which they could be on probation or parole, an assumption that is not applied to Whites. Often it is taken as a sign of disrespect, may erode police legitimacy and trust in communities of color, and potentially hinders the reintegration of parolees, probationers and others on supervised release by underscoring their continued marginal status.

THEREFORE:

Officers should not ask if a person is on probation or parole if the person has correctly identified themselves either verbally or by presenting identification documents. When officers determine it to be necessary, probation or parole status shall be checked by radio or mobile records.

If officers need to ask the question, “Are you on probation or parole?”, the officer should ask respectfully and consider that people may take offense at the question. Officers should only ask when necessary: 1) to protect the safety of others, the person detained, or officers; 2) to forward a legitimate law enforcement investigative purpose (for example, sorting out multiple computer returns on common names); or 3) to confirm probation and parole status subsequent to a records check.

2. **Warrantless Searches of Individuals on Supervised Release Search Conditions.** According to California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their release. However, such searches shall be conducted only to further a legitimate law enforcement purpose, and shall not be arbitrary, capricious, or harassing.

Considerable data suggest that searches are disproportionately conducted on people of color. Dr. Jennifer Eberhardt and her colleagues at the Stanford Open Policing Project have collected the most comprehensive data nationwide on 100 million traffic stops over 7 years in 29 police departments and found evidence of pervasive inequality in who gets stopped and searched. The Center for Policing Equity found that the BPD does better than most departments on this score, but that even here Black motorists who are stopped are four times more likely to be searched than Whites who are stopped, with the rate only slightly lower for Latinos. This disparity erodes trust in the police in communities of color and further marginalizes and hinders reintegration of those on post-release status.

THEREFORE:

Searches of individuals on supervised release shall only be conducted based on the totality of the circumstances, as indicated below.

Non-Violent Offenses. *When officers contact a person on supervised release for a non-violent offense during a vehicle, bicycle or pedestrian stop and there are no articulable facts that demonstrate the individual is connected in some way to criminal activity, or that the person is a threat to officers or others, officers shall not conduct a search of that person and/or their vehicle pursuant to any supervised release search clauses or conditions.*

“Non-violent offenses” are offenses in which violence, the threat of violence, or the use of a weapon is not a factor. Examples include possession of controlled substances or property crimes such as petty theft and burglary.

Violent Offenses. *Persons contacted or detained who are on supervised release for violent offenses may be searched pursuant to the terms of their supervised release conditions.*

“Violent offenses” involve the use of force, the threat of force, the use or possession of a weapon, sexual violations against the person of another, human trafficking, and robbery.

Sept. 23, 2020

Asking the Probation or Parole Question

Policy recommendation approved by the PRC Dec. 11, 2019

Provided for information only Sept. 9, 2020

Officers should not ask if a person is on probation or parole if the person has correctly identified themselves either verbally or by presenting identification documents. When officers deem it necessary to determine probation or parole status, officers shall conduct a records check.

Officers should only ask when necessary: 1) to protect the safety of others, the person detained, or officers; 2) to forward a legitimate law enforcement investigative purpose (for example, sorting out multiple computer returns on common names); or 3) to confirm probation and parole status subsequent to a records check. If officers need to ask the question, "Are you on probation or parole?" the officer shall ask respectfully and consider that people may take offense at the question.

Redlines show revisions approved by
Use of Force Policy Subcommittee 9-16-2020

September 15, 2020

To: Berkeley City Council Public Safety Policy Committee
Berkeley Police Review Commission

From: A. R. Greenwood, Chief of Police

Re: POLICY RECOMMENDATION: COUNCIL REFERRAL PROVIDING ALLOWANCE FOR
SPECIAL RESPONSE TEAM USE OF TEAR GAS IN CERTAIN CIRCUMSTANCES

During their July 23 meeting, as part of their action regarding the Use of Force policy item, Council referred “to the Police Review Commission and the Public Safety Committee the issue of providing an allowance for the Special Response Team to use tear gas in certain circumstances.”

The Department proposes the below policy language for consideration by the PRC and the Public Safety Policy Committee, to provide the allowance.

We propose this new language:

303.6 TEAR GAS GUIDELINES

Tear gas may only be used by trained members of the Special Response Team during SRT operations; (e.g., during barricaded subject operations, or responding to attacks during a SRT operation, ~~etc.~~) when it is objectively reasonable, in accordance with Policy 300, to protect people from the risk of serious bodily injury or death.

The above paragraph notwithstanding, As per City Council policy (June 9, 2020), the use of tear gas by employees of the Berkeley Police Department is ~~otherwise~~ prohibited in crowd control and crowd management situations.

When practicable, fire personnel should be alerted or summoned to the scene prior to deployment of tear gas by SRT, in order to control any fires and to assist in providing medical aid or gas evacuation if needed.

The above language will completely replace the current language:

303.6 TEAR GAS GUIDELINES

Tear gas may be used for crowd control, crowd dispersal or against barricaded suspects based on the circumstances. Only the Chief of Police may authorize the delivery and use of tear gas, and only after evaluating all conditions known at the time and determining that such force reasonably appears justified and necessary.

- (a) However, tear gas may be used without the Chief's authorization when exigent circumstances prevent the request from being made and the delay would likely risk injury to citizens or police personnel (e.g., rocks, bottles, or other projectiles being thrown and immediate crowd dispersal is necessary). In the event immediate use is necessary, notification to the Chief of Police, or his/her designee, should be made as soon as possible after the deployment.

When practicable, fire personnel should be alerted or summoned to the scene prior to the deployment of tear gas to control any fires and to assist in providing medical aid or gas evacuation if needed.

We will be available to attend Committee and Commission meetings to answer questions as soon as possible, to address this critical safety need.

Lee, Katherine

From: Greenwood, Andrew
Sent: Wednesday, September 16, 2020 8:22 PM
To: Wengraf, Susan; Thomsen, Rose
Cc: Lee, Katherine
Subject: Policy Revision-SRT Allowance for use of tear gas.docx
Attachments: Policy Revision-SRT Allowance for use of tear gas.docx

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Chair Wengraf, Ms. Thomsen,

Tonight the Police Review Commission Use of Force Subcommittee voted to pass this policy forward to the PRC for their consideration. During the meeting, some edits were made to the policy.

In the interest of avoiding duplicate efforts, I thought it would be helpful for the Public Safety Policy Committee to see the policy, as passed this evening by the PRC Subcommittee.

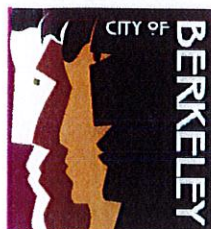
Please see the attached document, which shows the edits in track changes.

If you have any questions, please don't hesitate to let me know.

We look forward to attending the Public Safety Policy Committee next Monday.

Best regards,

Andrew Greenwood
Chief of Police
Berkeley Police Department



Office of the City Manager

ACTION CALENDAR
September 22, 2020

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Andrew Greenwood, Chief of Police
Subject: 2019 Crime Report and Five Year Use of Force Report

PART 1: CRIME REPORT

INTRODUCTION

At the request of City Council, the City Manager provides regular reports on crime in Berkeley and strategies undertaken by the Berkeley Police Department to safeguard our community. This report includes 2019 Part One crime information, and 2020 year-to-date (YTD) Part One crime information, as compared to the same time period in 2019.

This report also includes the first annual Use of Force Report, covering 2015-2019.

CURRENT SITUATION AND ITS EFFECTS

In 2019, total Part One crime in Berkeley increased by 15.6% overall. Part One Violent Crime increased by 3.2% (19 crimes) and Part One Property Crimes increased by 17% (921 crimes).

In 2019, (and for the second year in a row) there were no Homicides. However, increases in Part One Crimes were seen in Rape, Robbery, Aggravated Assault, and Larceny (Grand Theft, Petty Theft and Auto Burglary). Decreases were seen in Burglary, Auto Theft, and Arson.

In 2020 YTD, total Part One crime in Berkeley is down 1% overall. Part One Violent Crime decreased by 6% (23 crimes) and Part One Property Crimes is nearly identical, with 3,905 in 2019 YTD, and 3,888 in 2020 YTD.

Homicides

In 2019, there were no homicides in Berkeley.

In 2020 YTD, there have been three homicides. All three homicide investigations resulted in the arrest and charging of the suspects.

Robberies

In 2019, Robberies increased by 2.5% with 364 incidents as compared to 355 in 2018. 2019 data show an increase of 7.9% in pedestrian robberies and a decrease of 10.2% in commercial robberies. While the overall robbery numbers only increased slightly in 2019, laptop computer thefts/robberies continued to increase at a higher rate. Laptop thefts/robberies from Cafes and Restaurants increased by 39.3% for a total of 85 incidents versus 61 in 2018.

In 2020 YTD, Robberies are down 16% as compared to 2019 YTD. Pedestrian robberies were down sharply during the initial shelter order, and have started to rise over the summer. Estes robberies (where force is used during a shoplifting crime) have grown during the pandemic, and contributed to the increase in Robberies.

Aggravated Assaults

Aggravated Assaults increased 2.9% in 2019, with 175 reports, compared to 170 in 2018. There were 28 confirmed shooting incidents in 2019 versus 20 in 2018. Confirmed shooting incidents include loud report calls where shell casings or other evidence of gunfire is found. Arrests were made in at least eight of these incidents.

In 2020 YTD, Aggravated Assaults are up 17%, with 20 more reports thus far. There were 21 confirmed shooting incidents through the first eight months of 2020. Arrests have been made in eight shooting cases thus far.

Rape

In 2019, reported rapes increased 7.7%, with 70 reports as compared to 65 in 2018. Six of these cases were classified as stranger attacks.

In 2020 YTD as compared to 2019 YTD, rapes are down 21%, with 33 reports, as compared to 42 last year. None of these cases are classified as stranger attacks

Burglary, Larceny and Auto Theft

In 2019, Burglaries decreased by 5.2%, with 788 reports as compared to 831 reports in 2018. Residential burglaries decreased by 19.6% while commercial burglaries increased by 23.8%. Larcenies increased by 25.5% to 5,029 cases as compared to 4,007 in 2018. The larceny figures include Auto Burglary which increased 42.2% from 1,739 cases in 2018 to 2,473 cases in 2019. Auto Thefts decreased 9.3% from 548 cases in 2018 to 497 this year.

In 2020 YTD, burglaries are nearly even from the same period in 2019 YTD, with larcenies overall down 9%. Catalytic converter thefts, with approx. 362 this year have accounted for 45% of grand thefts.

In 2020 YTD, Auto Thefts have risen sharply, up 66%, with 211 more auto thefts this year.

Arson

In 2019, reported arsons decreased from 33 reported incidents in 2018 to 26 reported incidents in 2019, a 21% reduction. Most of the arson incidents were minor incidents.

In 2020 YTD, arsons are up by 23 incidents, with 34 in 2020 YTD, as compared to 11 in 2019 YTD.

Data

Data on serious crime is collected annually by the Federal Bureau of Investigation (FBI) from over 17,000 law enforcement agencies representing over 90% of the U. S. population. The FBI's primary objective in the Uniform Crime Report (UCR) is to generate a reliable set of crime statistics for use in law enforcement administration, operation, and management in the United States. The UCR tracks the following crimes:

Violent Crimes

Murder
Rape
Robbery
Aggravated Assault

Property Crimes

Burglary
Larceny (petty and grand theft, auto burglary)
Auto Theft
Arson*

**Arson is a UCR crime tracked separately from violent and property crime. It is included in the accompanying graphs.*

The UCR data provides the Berkeley Police Department the ability to analyze national and local crime trends, determine the effectiveness of response to crime, and conduct future planning and potential resource allocation. The FBI UCR handbook discourages using UCR statistics to compare crime rates of one jurisdiction to another because of the complex variables affecting crime and crime reporting practices.

BPD Strategies and Accomplishments

For 2019, the Berkeley Police Department's goal was to reduce the level of Part One Crime experienced in 2018 and previous years. The Department continued to implement strategies focused on reducing crime and community engagement. In 2020, the Department's work and resources have been impacted by the COVID-19 Pandemic. Some of the strategies and accomplishments are listed below:

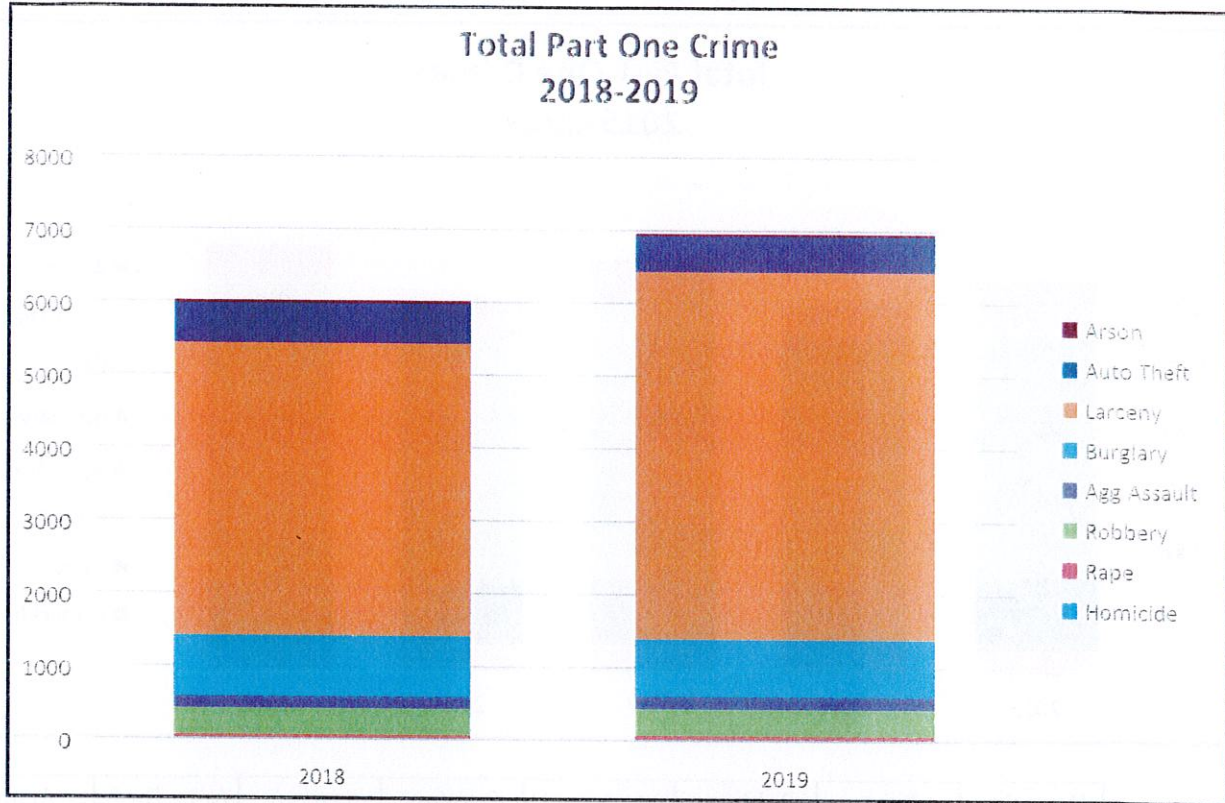
- Downtown Task Force
- Continued focus on gun violence and gun crimes
- Continued work on Sexual Assault cold cases
- COVID Impacts on Engagement "Coffee with a Cop", Pride Parade
- Responded to changing trends in crime during COVID
- Began Bike Patrol training and equipment acquisition
- Selection and implementation planning for recording stop data

- Bicycle theft cases (Bicycle thefts have decreased in each of the past 5 years. 2015-774, 2016-607, 2017-524, 2018-420, 2019-401)
- Staffing Focus
- Continued collaboration with the Berkeley Unified School District supporting the fifth year of Law and Social Justice classes for Berkeley High School

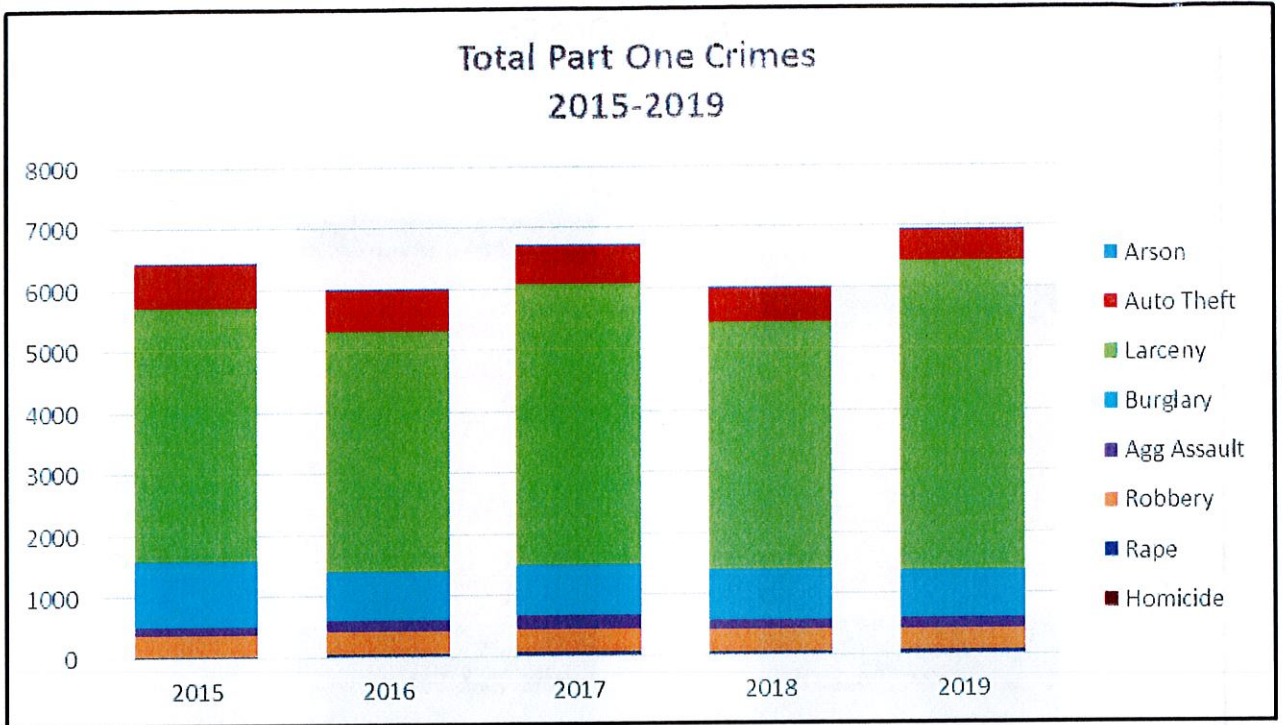
Included below are the annual totals of UCR data for Part One Violent and Property Crimes for 2018 and 2019 in Berkeley, as well as five-year trends in Part One Violent Crimes and Part One Property Crimes. Part One Crime data for 2020 year-to-date is also included.

Graphs below include:

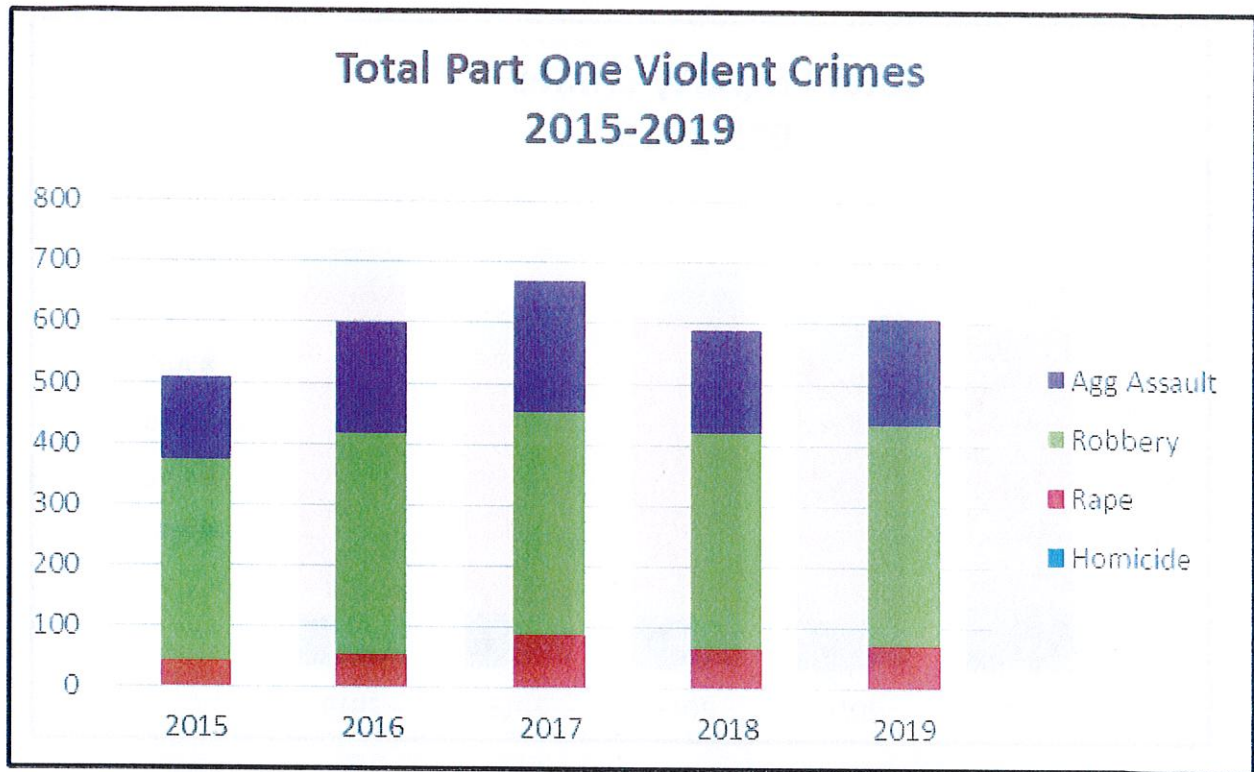
- UCR Part One Violent and Property Crime, two year trend
- UCR Part One Violent and Property Crime, five year trend
- UCR Part One Violent Crime, five year trend
- UCR Part One Property Crime, five year trend
- UCR Part One Violent and Property Crime, Jan-Aug 2019-2020
- UCR Part One Violent, Jan-Aug 2019-2020
- UCR Part One Property Crime, Jan-Aug 2019-2020



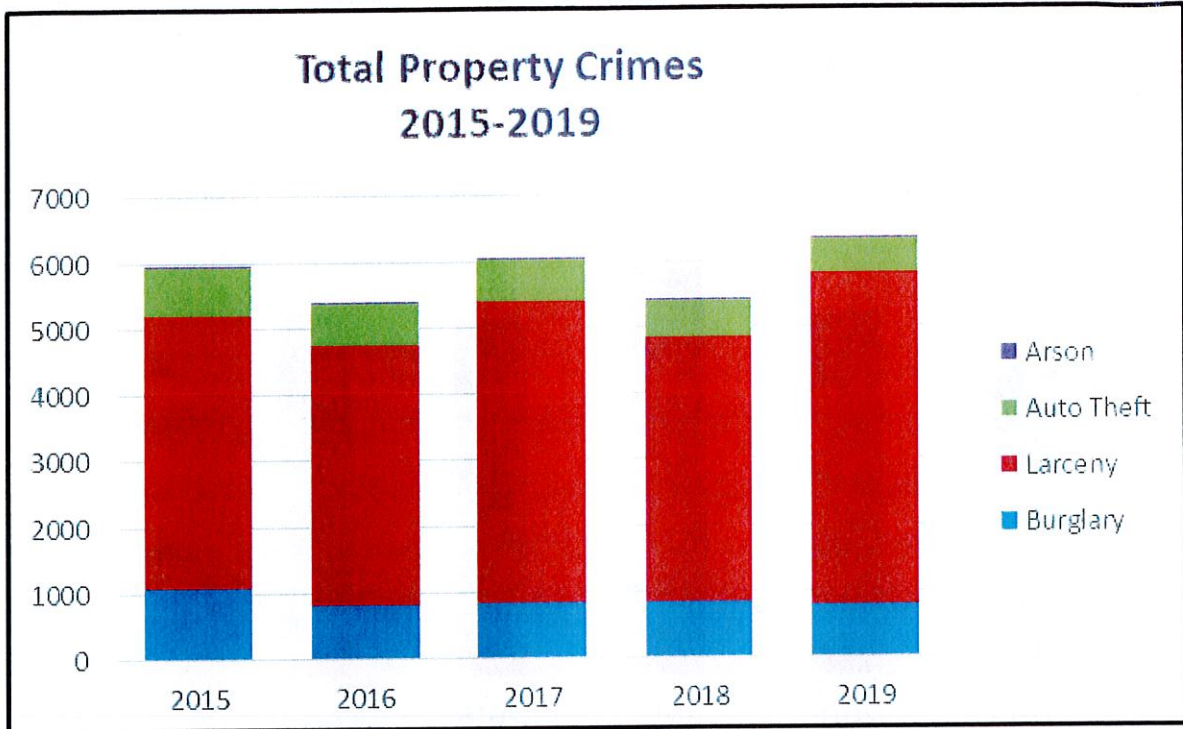
	Homicide	Rape	Robbery	Agg Assault	Burglary	Larceny	Auto Theft	Arson
2018	0	65	355	170	831	4007	548	33
2019	0	70	364	175	788	5029	497	26



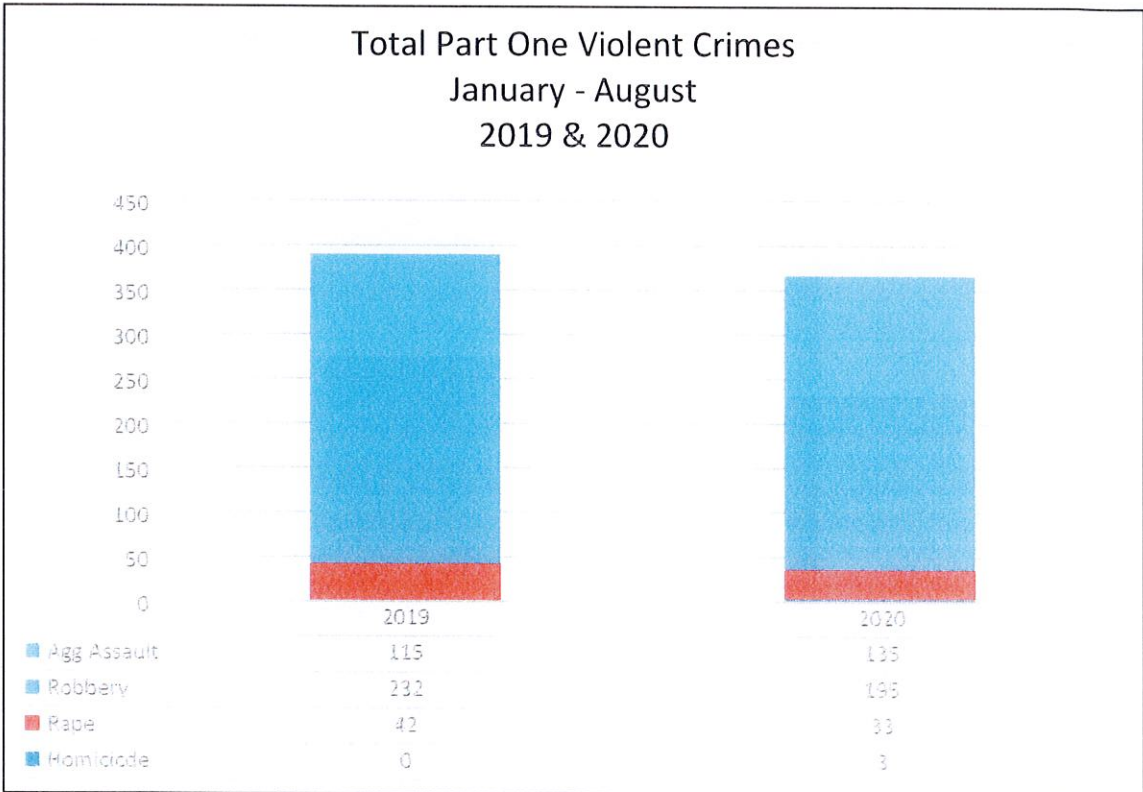
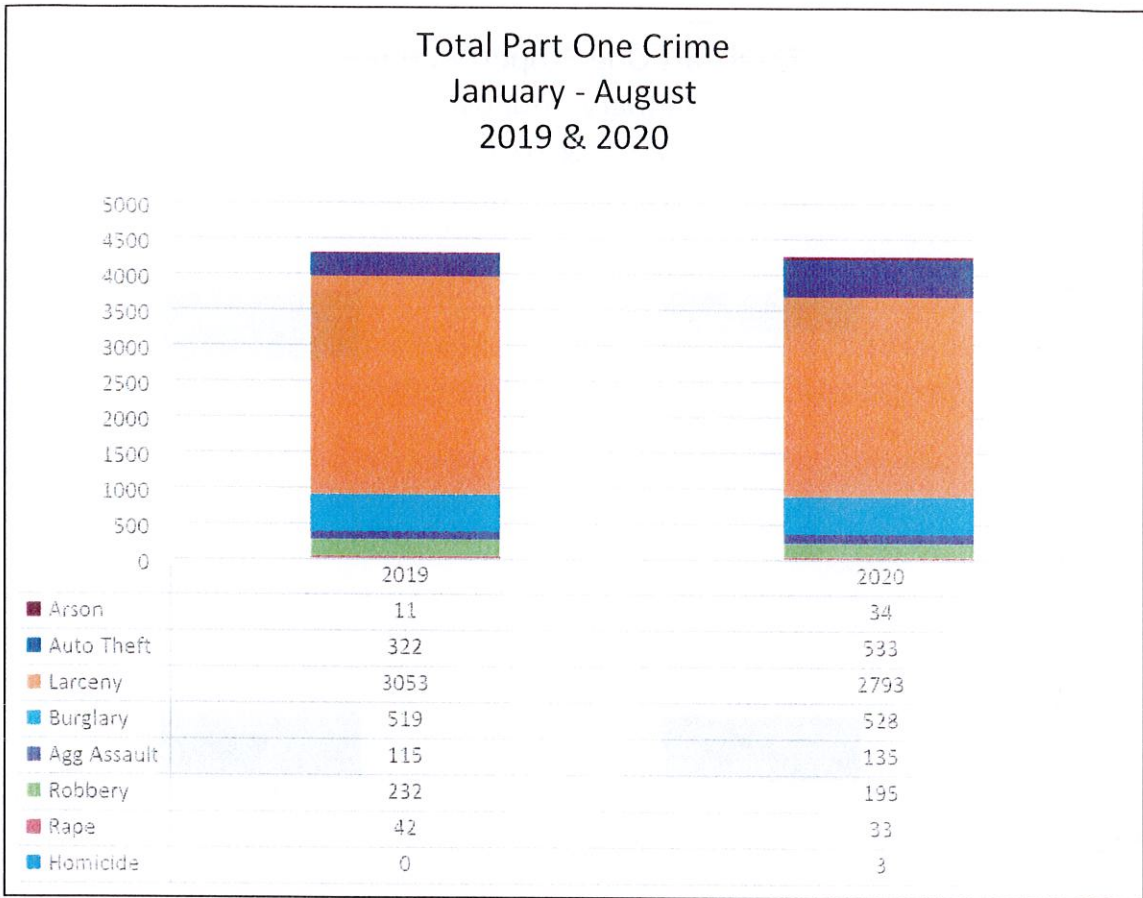
	Homicide	Rape	Robbery	Agg Assault	Burglary	Larceny	Auto Theft	Arson
2015	1	41	331	135	1089	4118	713	20
2016	2	53	362	182	803	3927	647	20
2017	1	87	364	218	841	4556	619	33
2018	0	65	355	170	831	4007	548	33
2019	0	70	364	175	788	5029	497	26



	Homicide	Rape	Robbery	Agg Assault
2015	1	41	331	135
2016	2	53	362	182
2017	1	87	364	218
2018	0	65	355	170
2019	0	70	364	175



	Burglary	Larceny	Auto Theft	Arson
2015	1089	4118	713	20
2016	803	3927	647	20
2017	841	4556	619	33
2018	831	4007	548	33
2019	788	5029	497	26





PART 2: USE OF FORCE ANNUAL REPORT

This report provides information for the past five years on all uses of force which involve an officer's use of any weapon, or where a suspect has a visible injury, or complains of pain as a result of force used by officers.

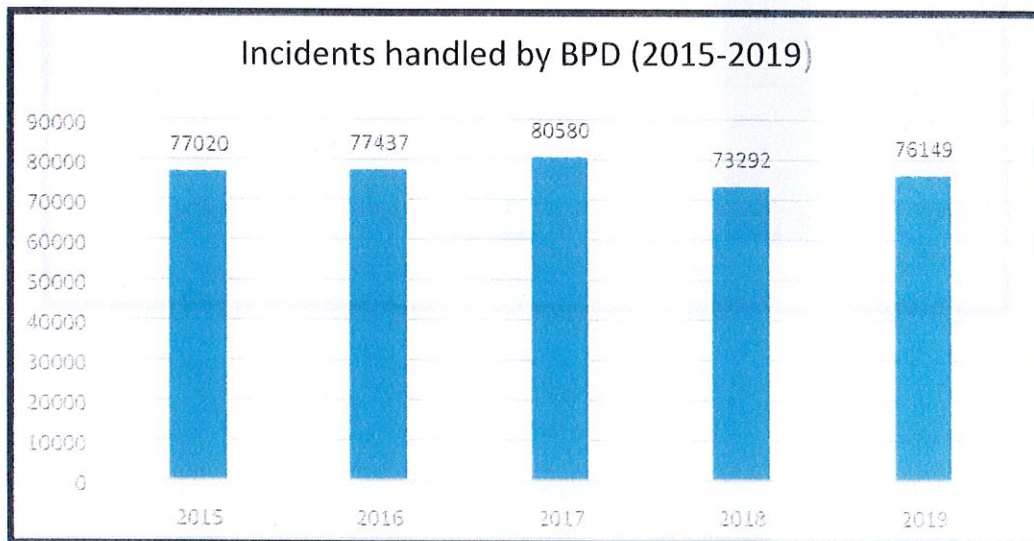
The Berkeley Police Department serves the community with a minimal reliance on force. Amidst Berkeley's challenging environment of crime and community safety issues, Berkeley Police officers responded to an average of 76,896 calls for service over the five year period of 2015-2019. During the same period, officers made an average of 3,017 arrests, and issued thousands of citations.

Officers accomplished their work with an average of 31.8 uses of force incidents per year from 2015 through 2019, that is, in .04% (four hundredths of one percent) of all incidents, and in 1% of all arrests.

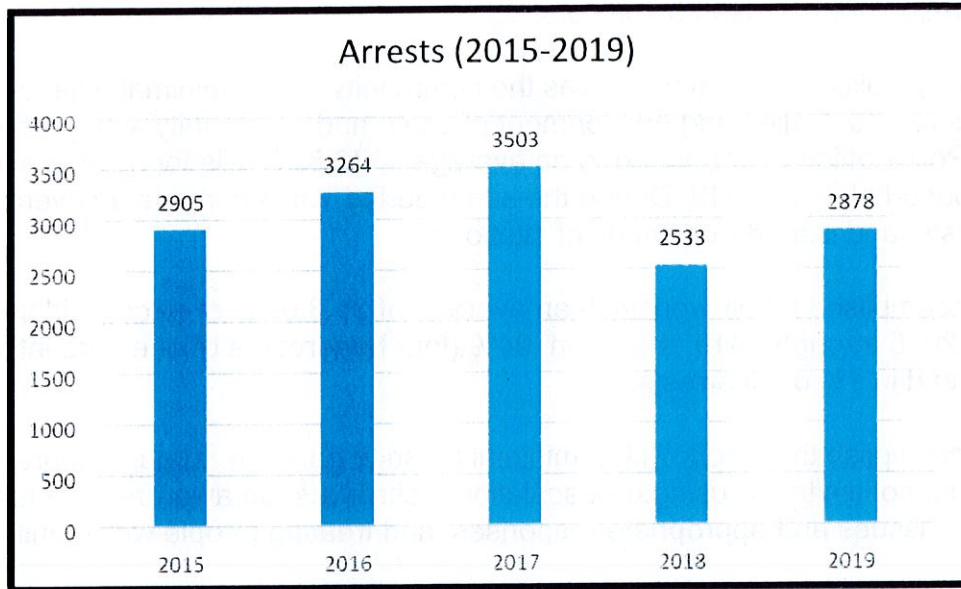
Officers accomplish their work with a minimal reliance on force, through approaches including but not limited to using de-escalation techniques, an awareness of mental health crisis issues and appropriate responses, and treating people with dignity and respect.

California Penal Code section 835a authorizes sworn peace officers to use force to effect arrest, overcome unlawful resistance, and prevent escape. Under certain specific and narrow circumstances, deadly force may be used. The vast majority of uses of force represented in this report are situations where suspects fled, resisted and fought being taken into custody. In some instances, force was used in response to attacks on officers.

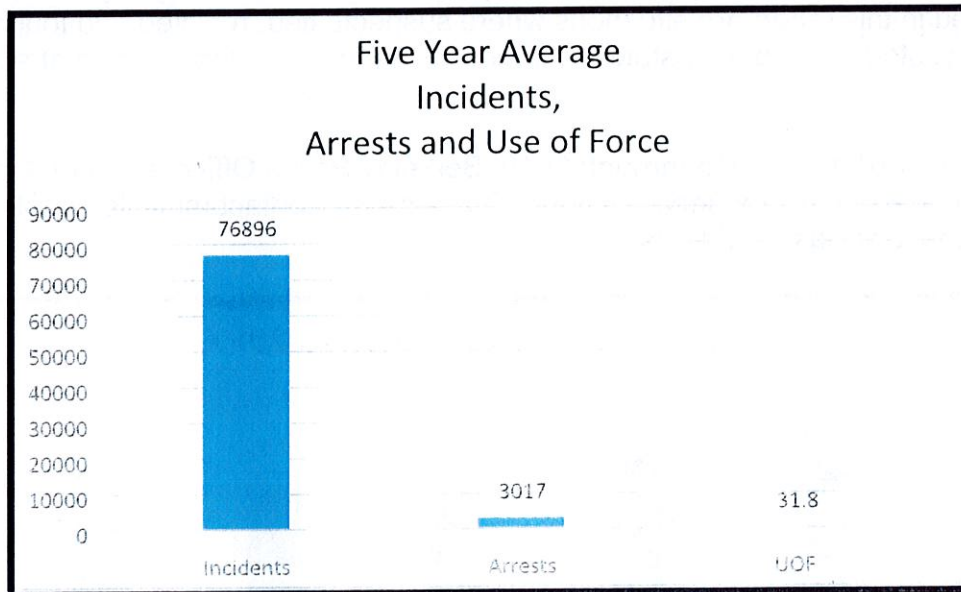
By way of context, from 2015 through 2019, Berkeley Police Officers respond to an average of 76,896 calls for service a year. Officers may contact multiple people in the course of responding to incidents.



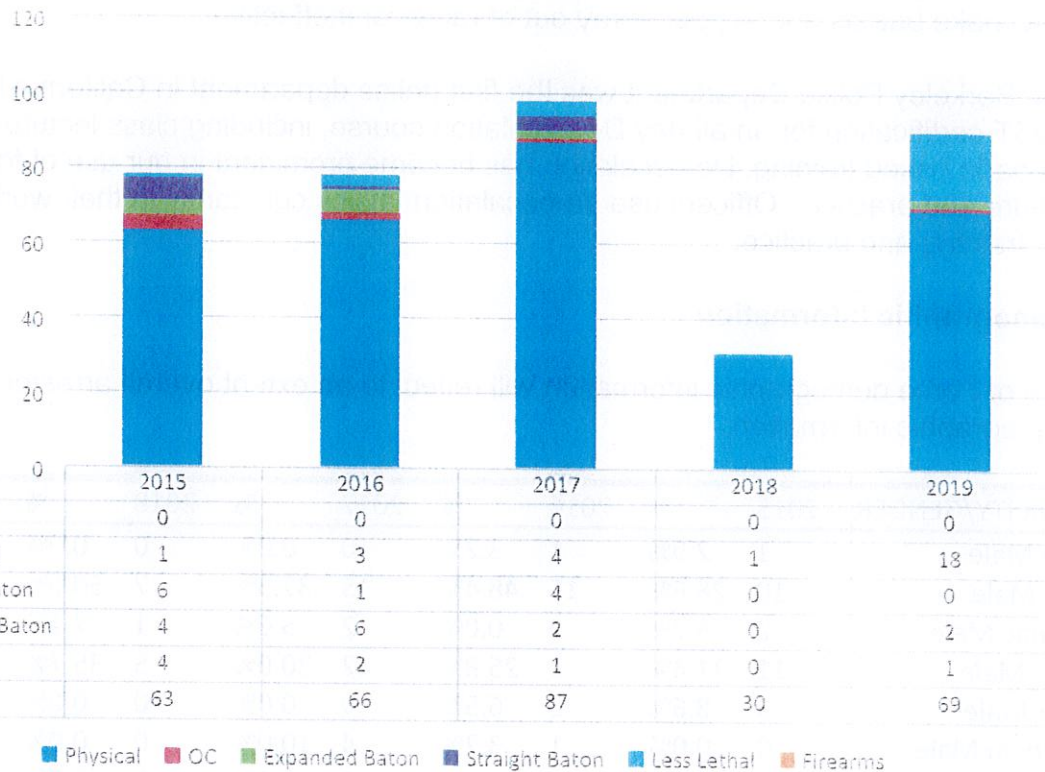
From 2015-2019, Berkeley Police officers made an average of 3,016 custodial arrests annually, and issued thousands of citations.



From 2015-2019, Berkeley Police officers used force on average in 31.8 incidents per year, or an average of one use of force incident in every 95 arrests.



Types of Force Used 2015-2019



The Berkeley Police Department tracks the use of force in accordance with General Order U-02 Use of Force. This policy requires that officers complete formal Use of Force reports whenever force results in complaint of injury, visible injury, or any weapon is used. In a given incident, more than one technique or type of force may be used to bring a resistant or combative individual into custody, and more than one officer may use force during the incident. There were an average of 75 applications of force per year across 31.8 incidents.

Each Use of Force report is reviewed by the involved officer's chain of command, from Sergeant to Lieutenant, to Captain, to the Chief of Police. Review includes review of body worn camera footage, the related crime report, and the Use of Force report.

Officers most often used physical force (e.g. control holds or physical techniques) to overcome resistance and combative behavior to effect arrests. Officers' uses of force involving weapons (e.g. straight baton or expandable baton, pepper spray and less lethal projectiles) are less common. Use of less lethal systems are limited to specially trained officers. There were no uses of firearms in the five years covered by this report.

In situations where officers are able to create opportunities for de-escalation, time, distance and cover help to minimize uses of force. When subjects are armed and combative, less lethal launchers allow officers to intervene and prevent violence at a distance. Employing less lethal launchers allow officers to use distance to reduce

threats arising out of close proximity contact, and help to reduce or prevent lethal force encounters, and community members' and officer injuries. Increased distances also may make batons and pepper spray out of range or ineffective.

The Berkeley Police Department was the first police department in California to receive POST certification for an all-day De-escalation course, including class lecture and scenario based training. De-escalation has become prominent in our use of force culture and practice. Officers use de-escalation tactics constantly in their work, through our training and practice.

Demographic Information

Use of Force demographic information will reflect to an extent overall arrestee demographic information.

ETHNICITY/GENDER	2015	%	2016	%	2017	%	2018	%	2019	%
Asian Male	1	2.9%	1	3.2%	0	0.0%	0	0.0%	0	0.0%
Black Male	10	28.6%	15	48.4%	15	37.5%	7	50.0%	16	41.0%
Hispanic Male	2	5.7%	0	0.0%	2	5.0%	1	7.1%	8	20.5%
White Male	11	31.4%	8	25.8%	12	30.0%	5	35.7%	11	28.2%
Other Male	3	8.6%	2	6.5%	0	0.0%	0	0.0%	1	2.6%
Unknown Male	0	0.0%	1	3.2%	4	10.0%	0	0.0%	0	0.0%
Asian Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Black Female	3	8.6%	0	0.0%	2	5.0%	1	7.1%	2	5.1%
Hispanic Female	2	5.7%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
White Female	2	5.7%	2	6.5%	5	12.5%	0	0.0%	1	2.6%
Other Female	1	2.9%	1	3.2%	0	0.0%	0	0.0%	0	0.0%
Unknown Female	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Other	0	0.0%	1	3.2%	0	0.0%	0	0.0%	0	0.0%
Total	35		31		40		14		39	

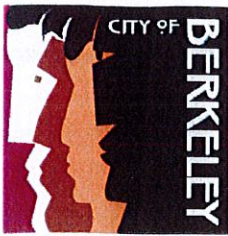
Age of Citizen	2015	%	2016	%	2017	%	2018	%	2019	%
Under 20	6	17.1	3	9.7%	0	0.0%	1	7.1%	4	10.3%
20-29	8	22.8	7	22.6%	14	35.0%	4	28.6%	11	28.2%
30-39	9	25.7	4	12.9%	13	32.5%	4	28.6%	13	33.3%
40-49	9	25.7	8	25.8%	3	7.5%	2	14.3%	7	17.9%
50+	3	8.6	7	22.6%	5	12.5%	3	21.4%	4	10.3%
Unknown	0	0	2	6.5%	5	12.5%	0	0.0%	0	0.0%
Total	35		31		40		14		39	

Conclusion: The above data provide information on uses of force reported under current policy. The Berkeley Police Department is currently working to implement a new

Use of Force policy which will report lesser uses of force not currently captured in the data. These lesser uses of force, which will be those in which there is no visible injury, no complaint of pain, and no weapons used, will result in more uses of force reported in the next annual report. Future reports will distinguish between the legacy force report data, and the “new” force data, so that comparisons over a multi-year period can be clearly made.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental opportunities or impacts associated with the subject of this report.



Finance Department
General Services Division

**FOR PROPOSALS (RFP)
Specification No. 21-11413
FOR
CITY OF BERKELEY POLICE RE-IMAGINING
PROPOSALS WILL NOT BE OPENED AND READ PUBLICLY**

Dear Proposer:

The City of Berkeley is soliciting written proposals from qualified firms or individuals who can plan, develop, and lead an inclusive and transparent community engagement process to help the City achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley. The qualified firm or individual will also be asked to summarize its work and research in a report and implementation plan that will consist of a series of recommendations to be considered by the City Council of the City of Berkeley. As a Request for Proposal (RFP) this is not an invitation to bid and although price is very important, other factors will be taken into consideration.

The project scope, content of proposal, and vendor selection process are summarized in the RFP (attached). **Proposals must be received no later than 2:00 pm, on Tuesday, October 6, 2020.** Proposals are to be sent via email with the “City of Berkeley Police Re-Imagining” and **Specification No. 21-11413** clearly indicated in the subject line of the email. Please submit one (1) PDF of the technical proposal. Corresponding pricing proposal shall be submitted as a separate document.

Email Proposals to:
City of Berkeley
Finance Department/General Services Division
purchasing@cityofberkeley.info

Proposals will not be accepted after the date and time stated above. Incomplete proposal or proposals that do not conform to the requirements specified herein will not be considered. Issuance of the RFP does not obligate the City to award a contract, nor is the City liable for any costs incurred by the proposer in the preparation and submittal of proposals for the subject work. The City retains the right to award all or parts of this contract to several bidders, to not select any bidders, and/or to re-solicit proposals. The act of submitting a proposal is a declaration that the proposer has read the RFP and understands all the requirements and conditions.

The City will conduct a non-mandatory pre-proposal conference on Tuesday, September 15, 2020 at 1:00 p.m. via ZOOM video conferencing at <https://zoom.us/j/95085315115>. To join by telephone, dial (669) 900 6833 (Meeting ID: 950 8531 5115).

For questions concerning the anticipated work, or scope of the project, please contact **David White, Deputy City Manager**, via email at dwhite@cityofberkeley.info no later than Monday, September 21, 2020. Answers to questions will not be provided by telephone or email. Answers to all questions or any addenda will be posted on the City of Berkeley’s site at <http://www.cityofberkeley.info/ContentDisplay.aspx?id=7128>. It is the vendor’s responsibility to check this site. For general questions concerning the submittal process, contact purchasing at 510-981-7320.

City of Berkeley
Police Re-Imagining

Specification No. 21-11413

Page 2 of 24
Release Date 09/08/20

We look forward to receiving and reviewing your proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Sweet', is positioned above the typed name.

Darryl Sweet, C.P.M., CPSM
General Services Manager

I. BACKGROUND

The City of Berkeley, California was originally incorporated as a town in 1878 and as a City in 1909. On January 30, 1909, the people of the City adopted a City Charter under which it currently operates (as amended). The City Council is responsible for adopting ordinances, resolutions, the budget, appointing commissions and committees, and hiring the City Manager. The City Manager is responsible for implementing the City Council's policies, ordinances and directives, for overseeing the day-to-day operations of the City, and for appointing the directors of the City's departments. The City of Berkeley has a population in excess of 120,000 and covers approximately 10 square miles.

In response to a culmination of events -- the deaths of George Floyd and Breonna Taylor, as well as the use of force by Police Departments throughout the country in responding to community gatherings demanding change -- along with concerns raised by citizens and community stakeholders, on [July 14, 2020](#), the City Council passed a package of items providing direction for the development of a new paradigm of public safety in Berkeley that is summarized below:

- Having the City's elected Auditor perform an analysis of City's emergency 9-1-1 calls-for-service and responses, as well as analysis of the Berkeley Police Department's (BPD) budget. The City Council encouraged the Auditor to engage with subject matter experts.
- Evaluate initiatives and reforms that reduce the footprint of the BPD and limit BPD's scope of work primarily to violent and criminal matters. This work should include an evaluation of programs and services currently provided by the BPD that could be better served by trained non-sworn city staff or community partners.
- Aspire to reduce the BPD's budget by 50% to generate resources to fund the following priorities:
 - Youth programs;
 - Violence prevention and restorative justice programs;
 - Domestic violence prevention;
 - Housing and homeless services;
 - Food security;
 - Public Health and Mental Health services including a specialized care unit;
 - Healthcare;
 - New city jobs;
 - Expanded partnerships with community organizations, and
 - Establishing a new Department of Transportation to administer parking regulations and traffic laws.
- Create plans and protocols for calls for service to be routed and assigned to alternative preferred responding entities and consider placing dispatch in the Fire Department or elsewhere outside the Police Department. The Fire and Police Departments are working collaboratively on developing a model for priority dispatching and the City Council placed a parcel tax initiative on the 2020 ballot that could implement this priority.
- Analyze and develop a pilot program to re-assign non-criminal police service calls to a Specialized Care Unit. This Specialized Care Unit (SCU) consisting of trained crisis-response field workers who would respond to calls that the Public Safety Communications Center operator evaluated as non-criminal and that posed no imminent threat to the safety of community members and/or Police Department or Fire Department personnel. The City Council has allocated resources to engage third-party resources to assist the City in developing this initiative.
- The City will align its work with the school district's commitment to look at exploring and reducing policing in the schools.
- Analysis of litigation outcomes and exposure for city departments in order to guide the creation of city policy to reduce the impact of settlements on the General Fund.

- Pursue the creation of a Berkeley Department of Transportation to ensure a racial justice lens in traffic enforcement and the development of transportation policy, programs and infrastructure, and identify and implement approaches to reduce and/or eliminate the practice of pretextual stops based on minor traffic violations.

Any firm or individual that is interested in responding to this RFP is strongly encourage to watch the [July 14, 2020 City Council meeting](#)¹ and read the Annotated Agenda for the [July 14, 2020 City Council meeting](#)², as well as the various proposals developed by the Mayor and City Council as contained in Items 18A – 18D on the [July 14, 2020 City Council Agenda](#)³.

In addition to the items listed above, the City Council adopted [Item 18c](#) (“Referral to City Manager to Re-imagine Policing Approaches to Public Safety Using a Process of Robust Community Engagement, to Develop a Path Forward to Transforming Public Safety and Policing in Berkeley”) and [Item 18d](#) (“Transform Community Safety and Initiate a Robust Community Engagement”), which directs the City Manager to engage a qualified firm(s) or individual(s) to lead a robust, inclusive, and transparent community engagement process with the goal of achieving a new and transformative model of positive, equitable and community-centered safety for Berkeley. [Items 18c](#) and [18d](#) provide the foundation for this assignment.

Berkeley’s communities of color, particularly our African American community must be at the forefront of conversations to re-imagine approaches to policing and public safety. It is critical that the future of community health and safety is defined by the Berkeley community, elevating the voices of our Black, Native American/First Peoples and other communities of color, LGBTQ+ people, victims of harm and other stakeholders that have been historically marginalized and under-served. The community should be invited and encouraged to participate in public, transparent community forums to listen, learn and receive people’s ideas about how policing should be re-imagined and transformed so that communities of color can feel safe within their own neighborhoods, the City of Berkeley, and in their interactions with the members of the BPD.

It is anticipated that the process will be informed by deep research and engagement of subject matter experts to define a holistic, anti-racist approach to community safety, including a review and analysis of new and emerging models, programs and practices of policing and community safety that can be applied in Berkeley.

Ultimately, the firm or individual that is selected for this assignment will recommend a new, community-centered safety paradigm as a foundation for deep and lasting change, grounded in the principles of Reduce, Improve and Reinvest as proposed by the National Institute for Criminal Justice Reform⁴, considering, among other things:

- The social determinants of health and changes required to deliver a holistic approach to community-centered safety; and
- Defining an appropriate response to calls-for-service including size, scope of operation and powers and duties of a well-trained police force; and
- Limiting militarized weaponry and equipment; and
- Identifying alternatives to policing and enforcement to reduce conflict, harm, and institutionalization, introduce restorative and transformative justice models, and reduce or eliminate use of fines and incarceration. Options to reduce police contacts, stops, arrests, tickets, fines and incarceration and replace these, to the greatest extent possible, with educational, community serving, restorative and other positive programs, policies and systems.

¹ http://berkeley.granicus.com/MediaPlayer.php?publish_id=c4e8bb75-c6ef-11ea-93cb-0050569183fa&meta_id=308590

² https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/07-14_Annotated_Agenda_pdf.aspx

³ https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/City_Council_07-14-2020_-_Regular_Meeting_Agenda.aspx

⁴ <https://nicjr.org/wp-content/uploads/2020/07/Shrink-the-Beast.pdf>

Finally, over the past few months, the City Council has taken action on a number of items that will inform this process:

- On [April 14, 2020](#), the City Council adopted a resolution submitting an amendment to the City Charter to establish a Director of Police Accountability and Police Accountability Board that will replace the existing Police Review Commission to a vote of the electors at the November 3, 2020 General Municipal Election.
- On [June 9, 2020](#), the City Council banned the use of tear gas in the City of Berkeley. The City Council also prohibited the use of pepper spray or smoke for crowd control during the COVID-19 pandemic.
- On [July 23, 2020](#), the City Council adopted a revised Use of Force of Policy that will go into effect on October 1, 2020.

II. SCOPE OF SERVICES

The successful firm or individual will be expected, at a minimum, to prepare a Scope of Services outlined below to help the City achieve a new and transformative model of positive, equitable and community-centered safety for Berkeley. The successful firm or individual should identify any additional services beyond what is described below that will be needed to meet the City's expectations and explain them in their response. Finally, the firm or individual that is selected for this assignment will need to remain flexible as the process may change as circumstances and outcomes from the discussions require.

Project Work Plan and Timing

Develop a project work plan and timeline that identifies key milestones and deliverables. The work plan and timeline shall be reviewed and discussed at a kick-off meeting with the City that will also provide an opportunity to review the scope of work and available data. The selected firm or individual will prepare the agenda for the kick-off meeting and be responsible for meeting minutes.

Research and Analysis

The following outlines research and analysis that shall be performed early in the assignment to inform the community engagement process.

- Analyze emergency and non-emergency calls-for-service for the past three (3) years to determine those calls-for-service that require a response from BPD. Results of this research shall be summarized in a memorandum and presented to the City. Prior to submitting a final memo and presentation, the City will be provided a draft memorandum and presentation to provide comments or questions that shall be incorporated into the final memorandum and presentation that is made publicly available.
- Develop a summary and presentation of new and emerging models of community safety and policing. In consultation with subject matter experts, prepare a memorandum and presentation of new and emerging models of community safety and policing. This work will include a review of current research and best practices along with case study research. To the extent practicable, this work will also include model legislation and policies that have been adopted and successfully implemented. Prior to submitting a final memo and presentation, the City will be provided a draft memorandum and presentation to provide comments or questions that shall be incorporated into the final memorandum and presentation that is made publicly available.

Develop and implement a robust, transparent, and inclusive community engagement process

It is envisioned that the firm or individual that is selected for this assignment will devise and lead a well-organized and structured community engagement process that will consist of one or more committees consisting of representatives of the City Council, City leadership, members of the Berkeley Police Department, residents, and other community stakeholders to provide oversight and direction to the overall process, as well as assist in the development and vetting of proposals for a new model of policing and community safety.

The community engagement process should consist of a number of strategies including virtual (Zoom) forums, roundtable discussions and focus groups, and community surveys to better understand and address race relations, social justice and the police-community relationship in the City of Berkeley. These discussions will be designed to engage the entire community and will seek to include community based organizations including but not limited to non-profits and faith based, the Police Review Commission, the City of Berkeley Police Chief and department, other City commissions and/or commissioners, neighborhood residents, and representatives of the business community. In developing a community engagement plan, the selected firm or individual should be prepared and plan for the possibility of meeting in person. The budget that is submitted to the City should include pricing for both options.

Develop and implement an effective communications strategy

The communications strategy will be designed to provide the City Council, City leadership and employees, community stakeholders, and the entire community with regular updates to ensure that the community is well-informed of the process and progress. The communications strategy will utilize multiple channels including, but not limited to: a project website either hosted by the City or the firm and/ or individual that is selected for this assignment (to be determined), community newsletters, email, social media, and video.

Report and Implementation Plan

The culmination of the work outlined in the Scope of Services shall be compiled and summarized in an easy-to-read narrative report that clearly identifies a model of community safety and policing in Berkeley. The implementation plan will provide the City with a clear roadmap, action items and recommendations, and timeline to achieve the recommended model of community safety and policing.

It is anticipated that the Report and Implementation Plan will, at a minimum, consist of the following:

- Executive summary that outlines the process, key findings and recommendations, and path to implementation.
- Summary of research and analysis performed as part of this assignment including the review of emergency and non-emergency calls-for-service and new and emerging models of community safety and policing.
- Summary of communications and community engagement process.
- Identify the programs and/or services provided by the BPD that can be provided by other City departments or external third-party entities. Recommendations for shifting work to other City departments or third-party entities should include the process, timeline and sequencing that would underpin the shift of work. Where programs and/or services provided by BPD are to be shifted to other City departments, the report will identify the specific job classification(s) to provide such service. Recommendations shall recognize and account for collective bargaining constraints and other considerations related to the Myers-Milias-Brown Act.
- Identify financial and organizational impacts and resources needed to implement recommendations, including, but not limited to:
 - Budget impacts, both revenue and expenditures, to the BPD budget.
 - Budget implications to other City Departments that are recommended to absorb programs and/or services previously performed by the BPD.
 - The extent to which the cost of new positions to be created are offset by savings in the BPD or other parts of the organization.

- Recommendations that shift work to entities outside of the City organization should include the expected cost to pay these outside entities and identify whether there is savings in the BPD to pay for these programs or services or if new resources will be needed.
- **Phasing and Timing of Recommendations.** Recommendations shall be prioritized and a phased plan for implementation will be provided to provide the City a roadmap to transition to the recommended model of community safety and policing, as the budget permits.

An Administrative Draft Report and Administrative Draft Implementation Plan will be submitted to the City and the City will be provided 14 days to submit questions or comments, which shall be incorporated into a Public Review Draft Report and Public Review Draft Implementation Plan that shall be made publicly available.

Following release of the Public Review Draft Report and Public Review Draft Implementation Plan, the firm or individual selected for this assignment shall lead two (2) public engagement workshops (remote or in person) to allow the public to comment on the Public Review Draft Report and Public Review Draft Implementation Plan.

Following the public engagement workshops, a Final Report and Final Implementation Plan will be prepared. The Final Report and Final Implementation Plan will be presented (remote or in person) to the following:

- City's Public Safety Policy Committee;
- City's Budget and Finance Policy Committee; and
- City Council.

Project Term

This work is anticipated to begin as soon as possible and the firm or individual that is selected is expected to act with urgency. This work must be completed by March 12, 2021 for the City Council to consider recommendations as part of its Fiscal Year 2022 / 2023 budget that will be adopted by City Council on or before June 30, 2021.

III. SUBMISSION REQUIREMENTS

All proposals shall include the following information, organized as separate sections of the proposal. The proposal should be concise and to the point

1. Contractor Identification:

Provide the name of the firm, the firm's principal place of business, the name and telephone number of the contact person and company tax identification number

2. Client References:

Provide a minimum of *three (3)* client references. References should be California cities or other large public sector entities. Provide the designated person's name, title, organization, address, telephone number, and the project(s) that were completed under that client's direction.

3. Price Proposal:

The proposal shall include pricing for all services. Pricing shall be all inclusive unless indicated otherwise. Pricing proposals shall be a separate document. The Proposal shall itemize all services, including hourly rates and estimated hours for all professional, technical and support personnel, and all other charges related to completion of the work shall be itemized per key deliverable under each task identified in the Scope of Services / Work Plan.

4. Contract Terminations:

If your organization has had a contract terminated in the last five (5) years, describe such incident. Termination for default is defined as notice to stop performance due to the vendor's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the vendor, or (b) litigated and such litigation determined that the vendor was in default.

Submit full details of the terms for default including the other party's name, address, and phone number. Present the vendor's position on the matter. The City will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience.

If the firm has not experienced any such termination for default or early termination in the past five (5) years, so indicate.

5. Proposal Submission Guidelines. All proposals should follow the following Format:

Section 1 - Background: Based on your understanding, briefly discuss the general requirements of the scope of work.

Section 2 – Scope: Discuss in detail each item in the RFP and how you intend to address each. This will be the longest section of your proposal and can have subsections.

Section 3 – Schedule: Develop a table of your expected schedule for completing the project. Include a breakdown of project tasks in the proposed schedule.

Section 4 – Staff: Indicate the staff who will be assigned to project. Detail their background and experience, and provide resumes for each team member.

Section 5 – Price Proposal: Provide your proposed price for the overall project, including a breakdown of the pricing for project tasks.

Section 6 – Additional Supporting Materials: Add any additional supporting information here. This is where to provide information related to similar projects you have completed for other cities or jurisdictions and what the results were.

IV. SELECTION CRITERIA

The following criteria will be considered, although not exclusively, in determining which firm is hired.

1. Project understanding and Scope of Services. The quality, clarity, and thoroughness of the response to the RFP will be considered and evaluated. (15%)
2. Relevant experience in race relations, social justice, restorative and transformational justice, social determinants of health and safety, leading police reform and a demonstrated understanding of the history of policing in Berkeley, as well as new and emerging models, programs, and practices of community safety that are equitable and community-centered. (35%)
3. Experience/expertise leading difficult conversations and engaging large, broad, and diverse stakeholder groups ranging from those who have been impacted by police violence to law enforcement that has resulted in actionable outcomes/change and engendered trust and confidence. (35%)
4. Qualifications and references including relevant experience of project team. Evaluation will be based on documented experience on similar projects, resumes, and experience narratives submitted. The selected firm or individual and any subcontractors will demonstrate relevant experience and values to advance the goal of

transforming public safety from one that is rooted in enforcement and punishment to prevention and wellness.
(15%)

A selection panel will be convened to evaluate proposals and make a selection of the firm or individual for this assignment.

After a review of the proposals from the short listed respondents, the City may ask the proposers to make an oral presentation to answer any questions the City may have and to clarify their proposal. The City will then rank the proposals and will attempt to negotiate satisfactory contracts with them. If the City is unable to reach agreement with the selected respondents, the City will repeat the negotiation process with the next highest respondent, and so on, if necessary.

V. PAYMENT

Invoices: Invoices must be fully itemized, and provide sufficient information for approving payment and audit. Invoices must be accompanied by receipt for services in order for payment to be processed. Mail invoices to the Project Manager and reference the contract number.

City of Berkeley
Accounts Payable
PO Box 700
Berkeley, CA 94701
Attn: **David White, Deputy City Manager**
City Manager's Office

Payments: The City will make payment to the vendor on a time and materials basis within 30 days of receipt of a correct and complete invoice.

VI. CITY REQUIREMENTS

A. Non-Discrimination Requirements:

Ordinance No. 5876-N.S. codified in B.M.C. Chapter 13.26 states that, for contracts worth more than \$3,000 bids for supplies or bids or proposals for services shall include a completed Workforce Composition Form. Businesses with fewer than five employees are exempt from submitting this form. (See B.M.C. 13.26.030)

Under B.M.C. section 13.26.060, the City may require any bidder or vendor it believes may have discriminated to submit a Non-Discrimination Program. The Contract Compliance Officer will make this determination. This applies to all contracts and all consultants (contractors). Berkeley Municipal Code section 13.26.070 requires that all contracts with the City contain a non-discrimination clause, in which the contractor agrees not to discriminate and allows the City access to records necessary to monitor compliance. This section also applies to all contracts and all consultants. **Bidders must submit the attached Non-Discrimination Disclosure Form with their proposal**

B. Nuclear Free Berkeley Disclosure Form:

Berkeley Municipal Code section 12.90.070 prohibits the City from granting contracts to companies that knowingly engage in work for nuclear weapons. This contracting prohibition may be waived if the City Council determines that no reasonable alternative exists to doing business with a company that engages in nuclear weapons work. If your company engages in work for nuclear weapons, explain on the Disclosure Form the nature of such work. **Bidders must submit the attached Nuclear Free Disclosure Form with their proposal.**

C. Oppressive States:

The City of Berkeley prohibits granting of contracts to firms that knowingly provide personal services to specified Countries. This contracting prohibition may be waived if the City Council determines that no reasonable alternative exists to doing business with a company that is covered by City Council Resolution No. 59,853-N.S. If your company or any subsidiary is covered, explain on the Disclosure Form the nature of such work. **Bidders must submit the attached Oppressive States Disclosure Form with their proposal.**

D. Sanctuary City Contracting Ordinance:

Chapter 13.105 of the Berkeley Municipal Code prohibits the City from granting and or retaining contracts with any person or entity that provides Data Broker or Extreme Vetting services to the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security ("ICE"). **Bidders must submit the attached Sanctuary City Compliance Statement with their proposal.**

E. Conflict of Interest:

In the sole judgment of the City, any and all proposals are subject to disqualification on the basis of a conflict of interest. The City may not contract with a vendor if the vendor or an employee, officer or director of the proposer's firm, or any immediate family member of the preceding, has served as an elected official, employee, board or commission member of the City who influences the making of the contract or has a direct or indirect interest in the contract.

Furthermore, the City may not contract with any vendor whose income, investment, or real property interest may be affected by the contract. The City, at its sole option, may disqualify any proposal on the basis of such a conflict of interest. **Please identify any person associated with the firm that has a potential conflict of interest.**

F. Berkeley Living Wage Ordinance:

Chapter 13.27 of the Berkeley Municipal Code requires that contractors offer all eligible employees with City mandated minimum compensation during the term of any contract that may be awarded by the City. If the Contractor is not currently subject to the Living Wage Ordinance, cumulative contracts with the City within a one-year period may subject Contractor to the requirements under B.M.C. Chapter 13.27. A certification of compliance with this ordinance will be required upon execution of a contract. The current Living Wage rate can be found here: https://www.cityofberkeley.info/Finance/Home/Vendors_Living_Wage_Ordinance.aspx. The Living Wage rate is adjusted automatically effective June 30th of each year commensurate with the corresponding increase in the Consumer Price Index published in April of each year. If the Living Wage rate is adjusted during the term of your agreement, you must pay the new adjusted rate to all eligible employees, regardless of what the rate was when the contract was executed.

G. Berkeley Equal Benefits Ordinance:

Chapter 13.29 of the Berkeley Municipal Code requires that contractors offer domestic partners the same access to benefits that are available to spouses. A certification of compliance with this ordinance will be required upon execution of a contract.

H. Statement of Economic Interest:

The City's Conflict of Interest Code designates "consultants" as a category of persons who must complete Form 700, Statement of Economic Interest, at the beginning of the contract period and again at the termination of the contract. The selected contractor will be required to complete the Form 700 before work may begin.

VII. OTHER REQUIREMENTS

A. Insurance

The selected contractor will be required to maintain general liability insurance in the minimum amount of \$2,000,000, automobile liability insurance in the minimum amount of \$1,000,000 and a professional liability insurance policy in the amount of \$2,000,000 to cover any claims arising out of the performance of the contract. The general liability and automobile insurance must name the City, its officers, agents, volunteers and employees as additional insureds.

B. Worker's Compensation Insurance:

A selected contractor who employs any person shall maintain workers' compensation insurance in accordance with state requirements. Sole proprietors with no employees are not required to carry Worker's Compensation Insurance.

C. Business License

Virtually every contractor that does business with the City must obtain a City business license as mandated by B.M.C. Ch. 9.04. The business license requirement applies whether or not the contractor has an office within the City limits. However, a "casual" or "isolated" business transaction (B.M.C. section 9.04.010) does not subject the contractor to the license tax. Warehousing businesses and charitable organizations are the only entities specifically exempted in the code from the license requirement (see B.M.C. sections, 9.04.295 and 9.04.300). Non-profit organizations are granted partial exemptions (see B.M.C. section 9.04.305). Persons who, by reason of physical infirmity, unavoidable misfortune, or unavoidable poverty, may be granted an exemption of one annual free license at the discretion of the Director of Finance. (see B.M.C. sections 9.04.290).

Vendor must apply for a City business license and show proof of application to Purchasing Manager within seven days of being selected as intended contractor.

The Customer Service Division of the Finance Department located at 1947 Center Street, Berkeley, CA 94704, issues business licenses. Contractors should contact this division for questions and/or information on obtaining a City business license, in person, or by calling 510-981-7200.

D. Recycled Paper

Any printed reports for the City required during the performance of the work shall be on 100% recycled paper, and shall be *printed on both sides of the page* whenever practical.

E. State Prevailing Wage:

Certain labor categories under this project may be subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et. seq. These labor categories, when employed for any "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," constitute a "Public Work" within the definition of Section 1720(a)(1) of the California Labor Code requiring payment of prevailing wages.

Wage information is available through the California Division of Industrial Relations web site at: http://www.dir.ca.gov/OPRL/statistics_and_databases.html

VIII. SCHEDULE (dates are subject to change)

- | | |
|--|------------------------------|
| <input type="checkbox"/> Issue RFP to Potential Bidders | Tuesday, September 8, 2020 |
| <input type="checkbox"/> Pre-proposal conference | Tuesday, September 15, 2020 |
| <input type="checkbox"/> Written Questions Due | Monday, September 21, 2020 |
| <input type="checkbox"/> Answers Provided | Thursday, September 24, 2020 |
| <input type="checkbox"/> Proposals Due from Potential Bidders | Tuesday, October 6, 2020 |
| <input type="checkbox"/> Complete Selection Process | October 16, 2020 |
| <input type="checkbox"/> Council Approval of Contract (over \$50k) | November 10, 2020 |
| <input type="checkbox"/> Award of Contract | November 11, 2020 |
| <input type="checkbox"/> Sign and Process Contract | November 11 - 23, 2020 |
| <input type="checkbox"/> Notice to Proceed | November 23, 2020 |

Thank you for your interest in working with the City of Berkeley for this service. We look forward to receiving your proposal.

Attachments:

- | | |
|---|--------------|
| • Check List of Required items for Submittal | Attachment A |
| • Non-Discrimination/Workforce Composition Form | Attachment B |
| • Nuclear Free Disclosure Form | Attachment C |
| • Oppressive States Form | Attachment D |
| • Sanctuary City Compliance Statement | Attachment E |
| • Living Wage Form | Attachment F |
| • Equal Benefits Certification of Compliance | Attachment G |
| • Right to Audit Form | Attachment H |
| • Insurance Endorsement | Attachment I |

ATTACHMENT A

CHECKLIST

- Proposal describing service (one (1) PDF of proposal)
- Contractor Identification and Company Information
- Client References
- Costs proposal by task, type of service & personnel (as a separate document from the proposal)
- The following forms, completed and **signed in blue ink** (attached):
 - Non-Discrimination/Workforce Composition Form Attachment B
 - Nuclear Free Disclosure Form Attachment C
 - Oppressive States Form Attachment D
 - Sanctuary City Compliance Statement Attachment E
 - Living Wage Form (*may be optional*) Attachment F
 - Equal Benefits Certification (EBO-1) (*may be optional*) Attachment G

ADDITIONAL SUBMITTALS REQUIRED FROM SELECTED VENDOR AFTER COUNCIL APPROVAL TO AWARD CONTRACT.

- Provide **original-signed in blue ink** Evidence of Insurance
 - Auto
 - Liability
 - Worker's Compensation
- Right to Audit Form Attachment H
- Commercial General & Automobile Liability Endorsement Form Attachment I
- Berkeley Business License

For informational purposes only: Sample of Personal Services Contract can be found on the City's website on the current bid and proposal page at the top of the page.

NON-DISCRIMINATION/WORKFORCE COMPOSITION FORM FOR NON-CONSTRUCTION CONTRACTS

To assist the City of Berkeley in implementing its Non-Discrimination policy, it is requested that you furnish information regarding your personnel as requested below and return it to the City Department handling your contract:

Organization: _____

Address: _____

Business Lic. #: _____

Occupational Category: (See reverse side for explanation of terms)	Total Employees		White Employees		Black Employees		Asian Employees		Hispanic Employees		Other Employees	
	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female	Male
Official/Administrators												
Professionals												
Technicians												
Protective Service Workers												
Para-Professionals												
Office/Clerical												
Skilled Craft Workers												
Service/Maintenance												
Other (specify)												
Totals:												

Is your business MBE/WBE/DBE certified? Yes _____ No _____ If yes, by what agency? _____

If yes, please specify: Male: _____ Female: _____ Indicate ethnic identifications: _____

Do you have a Non-Discrimination policy? Yes: _____ No: _____

Signed: _____ Date: _____

Verified by: _____ Date: _____

City of Berkeley Contract Compliance Officer

Attachment B (page 1)

Occupational Categories

Officials and Administrators - Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy superintendents, unit supervisors and kindred workers.

Professionals - Occupations that require specialized and theoretical knowledge that is usually acquired through college training or through work experience and other training that provides comparable knowledge. Includes: personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dietitians, lawyers, systems analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, and kindred workers.

Technicians - Occupations that require a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers and operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences) and kindred workers.

Protective Service Workers - Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police officers, fire fighters, guards, sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers, and kindred workers.

Para-Professionals - Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually requires less formal training and/or experience normally required for professional or technical status. Such positions may fall within an identified pattern of a staff development and promotion under a "New Transporters" concept. Includes: library assistants, research assistants, medical aides, child support workers, police auxiliary, welfare service aides, recreation assistants, homemaker aides, home health aides, and kindred workers.

Office and Clerical - Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, office machine operators, clerk-typists, stenographers, court transcribers, hearings reporters, statistical clerks, dispatchers, license distributors, payroll clerks, and kindred workers.

Skilled Craft Workers - Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairpersons, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters, and kindred workers.

Service/Maintenance - Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial personnel, gardeners and groundskeepers, refuse collectors, and construction laborers.

Attachment B (page 2)

CITY OF BERKELEY
Nuclear Free Zone Disclosure Form

I (we) certify that:

1. I am (we are) fully cognizant of any and all contracts held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, more than one individual may sign this disclosure form, if a description of which type of contracts each individual is cognizant is attached.)
2. I (we) understand that Section 12.90.070 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90; Ordinance No. 5784-N.S.) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.
3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code Section 12.90.130:

"Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management or administration of such work.

"Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.

"Component of a nuclear weapon" is any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon (or be a part of a nuclear weapon).

4. Neither this business entity nor its parent nor any of its subsidiaries engages in work for nuclear weapons or anticipates entering into such work for the duration of its contract(s) with the City of Berkeley.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Business Entity: _____

Contract Description/Specification No: **Police Re-Imagining/21-11413**

Attachment C

CITY OF BERKELEY
Oppressive States Compliance Statement

The undersigned, an authorized agent of _____ (hereafter "Vendor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59.853-N.S. (hereafter "Resolution"). Vendor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Vendor understands the meaning of the following terms used in the Resolution:

"Business Entity" means "any individual, firm, partnership, corporation, association or any other commercial organization, including parent-entities and wholly-owned subsidiaries" (to the extent that their operations are related to the purpose of the contract with the City).

"Oppressive State" means: **Tibet Autonomous Region and the Provinces of Abo, Kham and U-Tsang**

"Personal Services" means "the performance of any work or labor and shall also include acting as an independent contractor or providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual relationship."

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract it provides Personal Services to:

- a. The governing regime in any Oppressive State.
- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any person for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

Vendor further understands and agrees that Vendor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Vendor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

The undersigned is familiar with, or has made a reasonable effort to become familiar with, Vendor's business structure and the geographic extent of its operations. By executing the Statement, Vendor certifies that it complies with the requirements of the Resolution and that if any time during the term of the contract it ceases to comply, Vendor will promptly notify the City Manager in writing.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Business Entity: _____

Contract Description/Specification No: **Police Re-imagining/21-11413**

I am unable to execute this Statement; however, Vendor is exempt under Section VII of the Resolution. I have attached a separate statement explaining the reason(s) Vendor cannot comply and the basis for any requested exemption.

Signature: _____ Date: _____

CITY OF BERKELEY
Sanctuary City Compliance Statement

The undersigned, an authorized agent of _____ (hereafter "Contractor"), has had an opportunity to review the requirements of Berkeley Code Chapter 13.105 (hereafter "Sanctuary City Contracting Ordinance" or "SCCO"). Contractor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with any person or entity that provides Data Broker or Extreme Vetting services to the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security ("ICE"). Contractor understands the meaning of the following terms used in the SCCO:

- a. "Data Broker" means either of the following:
 - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
 - ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services." Extreme Vetting does not include:
 - i. The City's computer-network health and performance tools;
 - ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.

Contractor understands that it is not eligible to receive or retain a City contract if at the time the Contract is executed, or at any time during the term of the Contract, it provides Data Broker or Extreme Vetting services to ICE.

Contractor further understands and agrees that Contractor's failure to comply with the SCCO shall constitute a material default of the Contract and the City Manager may terminate the Contract and bar Contractor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

By executing this Statement, Contractor certifies that it complies with the requirements of the SCCO and that if any time during the term of the Contract it ceases to comply, Contractor will promptly notify the City Manager in writing. Any person or entity who knowingly or willingly supplies false information in violation of the SCCO shall be guilty of a misdemeanor and up to a \$1,000 fine.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this _____ day of _____, 20__, at _____, California.

Printed Name: _____ Title: _____

Signed: _____ Date: _____

Business Entity: _____

Contract Description/Specification No: **Police Re-Imagining/21-11413**

CITY OF BERKELEY
Living Wage Certification for Providers of Services

TO BE COMPLETED BY ALL PERSONS OR ENTITIES ENGAGING IN A CONTRACT FOR PERSONAL SERVICES WITH THE CITY OF BERKELEY.

The Berkeley Municipal Code Chapter 13.27, Berkeley's Living Wage Ordinance (LWO), provides that contractors who engage in a specified amount of business with the City (except where specifically exempted) under contracts which furnish services to or for the City in any twelve (12) month period of time shall comply with all provisions of this Ordinance. The LWO requires a City contractor to provide City mandated minimum compensation to all eligible employees, as defined in the Ordinance. In order to determine whether this contract is subject to the terms of the LWO, please respond to the questions below. Please note that the LWO applies to those contracts where the contractor has achieved a cumulative dollar contracting amount with the City. Therefore, even if the LWO is inapplicable to this contract, subsequent contracts may be subject to compliance with the LWO. Furthermore, the contract may become subject to the LWO if the status of the Contractor's employees change (i.e. additional employees are hired) so that Contractor falls within the scope of the Ordinance.

Section I.

I. IF YOU ARE A FOR-PROFIT BUSINESS, PLEASE ANSWER THE FOLLOWING QUESTIONS

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid, or proposal, with the City of Berkeley for a cumulative amount of \$25,000.00 or more?

YES _____ NO _____

If **no**, this contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If **yes**, please continue to question 1(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?

YES _____ NO _____

If you have answered, "YES" to questions 1(a) and 1(b) this contract IS subject to the LWO. If you responded "NO" to 1(b) this contract IS NOT subject to the LWO. Please continue to Section II.

2. IF YOU ARE A NON-PROFIT BUSINESS, AS DEFINED BY SECTION 501(C) OF THE INTERNAL REVENUE CODE OF 1954, PLEASE ANSWER THE FOLLOWING QUESTIONS.

a. During the previous twelve (12) months, have you entered into contracts, including the present contract, bid or proposal, with the City of Berkeley for a cumulative amount of \$100,000.00 or more?

YES _____ NO _____

If no, this Contract is NOT subject to the requirements of the LWO, and you may continue to Section II. If yes, please continue to question 2(b).

b. Do you have six (6) or more employees, including part-time and stipend workers?

YES _____ NO _____

If you have answered, "YES" to questions 2(a) and 2(b) this contract IS subject to the LWO. If you responded "NO" to 2(b) this contract IS NOT subject to the LWO. Please continue to Section II.

Section II

Please read, complete, and sign the following:

THIS CONTRACT IS SUBJECT TO THE LIVING WAGE ORDINANCE.

THIS CONTRACT IS NOT SUBJECT TO THE LIVING WAGE ORDINANCE.

The undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, hereby certifies that he or she is fully aware of Berkeley's Living Wage Ordinance, and the applicability of the Living Wage Ordinance, and the applicability of the subject contract, as determined herein. The undersigned further agrees to be bound by all of the terms of the Living Wage Ordinance, as mandated in the Berkeley Municipal Code, Chapter 13.27. If, at any time during the term of the contract, the answers to the questions posed herein change so that Contractor would be subject to the LWO, Contractor will promptly notify the City Manager in writing. Contractor further understands and agrees that the failure to comply with the LWO, this certification, or the terms of the Contract as it applies to the LWO, shall constitute a default of the Contract and the City Manager may terminate the contract and bar Contractor from future contracts with the City for five (5) years from the effective date of the Contract termination. If the contractor is a for-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 25% or more of their compensated time engaged in work directly related to the contract with the City. If the contractor is a non-profit business and the LWO is applicable to this contract, the contractor must pay a living wage to all employees who spend 50% or more of their compensated time engaged in work directly related to the contract with the City.

These statements are made under penalty of perjury under the laws of the state of California.

Printed Name: _____ Title: _____

Signature: _____ Date: _____

Business Entity: _____

Contract Description/Specification No: **Police Re-Imagining/21-11413**

Section III

-
- **** FOR ADMINISTRATIVE USE ONLY -- PLEASE PRINT CLEARLY ****

I have reviewed this Living Wage Certification form, in addition to verifying Contractor's total dollar amount contract commitments with the City in the past twelve (12) months, and determined that this Contract IS / IS NOT (circle one) subject to Berkeley's Living Wage Ordinance.

Department Name

Department Representative

Attachment F (page 2)

To be completed by
Contractor/Vendor



Form EBO-1
CITY OF BERKELEY

CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE

If you are a **contractor**, return this form to the originating department/project manager. If you are a **vendor** (supplier of goods), return this form to the Purchasing Division of the Finance Dept.

SECTION 1. CONTRACTOR/VENDOR INFORMATION

Name:	Vendor No.:		
Address:	City:	State:	ZIP:
Contact Person:	Telephone:		
E-mail Address:	Fax No.:		

SECTION 2. COMPLIANCE QUESTIONS

- A. The EBO is inapplicable to this contract because the contractor/vendor has no employees.
 Yes No (If "Yes," proceed to Section 5; if "No", continue to the next question.)
- B. Does your company provide (or make available at the employees' expense) any employee benefits?
 Yes No
If "Yes," continue to Question C.
If "No," proceed to Section 5. (The EBO is not applicable to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee? Yes No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee? Yes No

If you answered "No" to both Questions C and D, proceed to Section 5. (The EBO is not applicable to this contract.) If you answered "Yes" to both Questions C and D, please continue to Question E. If you answered "Yes" to Question C and "No" to Question D, please continue to Section 3.

- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of the employee? Yes No

If you answered "Yes," proceed to Section 4. (You are in compliance with the EBO.)
If you answered "No," continue to Section 3.

SECTION 3. PROVISIONAL COMPLIANCE

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
 - By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor submits evidence of taking reasonable measures to comply with the EBO; or
 - At such time that administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor's infrastructure, not to exceed three months; or
 - Upon expiration of the contractor's current collective bargaining agreement(s).

Attachment G (page 1)

B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent?* Yes No

* The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.

SECTION 4. REQUIRED DOCUMENTATION

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statements, etc.) to verify that you do not discriminate in the provision of benefits.

SECTION 5. CERTIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Berkeley Municipal Code and in the terms of the contract or purchase order with the City.

Executed this _____ day of _____, in the year _____, at _____, _____
(State) (City)

Name (please print)

Signature

Title

Federal ID or Social Security Number

FOR CITY OF BERKELEY USE ONLY

- Non-Compliant (The City may not do business with this contractor/vendor)
 - One-Person Contractor/Vendor Full Compliance Reasonable Measures
 - Provisional Compliance Category, Full Compliance by Date: _____
- Staff Name(*Sign and Print*): _____ Date: _____

CITY OF BERKELEY
Right to Audit Form

The contractor agrees that pursuant to Section 61 of the Berkeley City Charter, the City Auditor's office may conduct an audit of Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this contract.

In the event of such audit, Contractor agrees to provide the Auditor with reasonable access to Contractor's employees and make all such financial, performance and compliance records available to the Auditor's office. City agrees to provide Contractor an opportunity to discuss and respond to/any findings before a final audit report is filed.

Signed: _____ Date: _____

Print Name & Title: _____

Company: _____

Contract Description/Specification No: **Police Re-Imagining/21-11413**

Please direct questions regarding this form to the Auditor's Office, at (510) 981-6750.

Attachment H

CITY OF BERKELEY
Commercial General and Automobile Liability Endorsement

The attached Certificates of Insurance are hereby certified to be a part of the following policies having the following expiration dates:

Policy No.	Company Providing Policy	Expir. Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The scope of the insurance afforded by the policies designated in the attached certificates is not less than that which is afforded by the Insurance Service Organization's or other "Standard Provisions" forms in use by the insurance company in the territory in which coverage is afforded.

Such Policies provide for or are hereby amended to provide for the following:

1. The named insured is _____.
2. CITY OF BERKELEY ("City") is hereby included as an additional insured with respect to liability arising out of the hazards or operations under or in connection with the following agreement:
_____.

The insurance provided applies as though separate policies are in effect for both the named insured and City, but does not increase the limits of liability set forth in said policies.

3. The limits of liability under the policies are not less than those shown on the certificate to which this endorsement is attached.
4. Cancellation or material reduction of this coverage will not be effective until thirty (30) days following written notice to _____, Department of _____, Berkeley, CA.
5. This insurance is primary and insurer is not entitled to any contribution from insurance in effect for City.

The term "City" includes successors and assigns of City and the officers, employees, agents and volunteers.

Insurance Company

Date: _____ By: _____
Signature of Underwriter's
Authorized Representative

2020 Annual Commission Attendance Report

Reporting Period: September 1, 2019 through August 31, 2020

Vacant seats: 1
(as of August 31, 2020)

Commission: Police Review Commission

Commission Secretary: Katherine J. Lee

Example:

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9/15/19		8 of 9	5	3	2.5 hrs
2/1/20	Yes – no quorum				

Scheduled Meeting Date	Cancelled? If Yes, Provide Reason	Commissioners Present	Public Present	Public Speakers	Meeting Length
9-4-19		9 of 9	7	4	3.0 hrs
9-18-19		6 of 9	2	1	1.9 hrs
10-9-19	Yes – public safety power shutoff				
10-23-19		8 of 9	10	3	3.2 hrs
11-13-19		7 of 9	11	7	2.7 hrs
12-11-19		7 of 9	10	9	3.2 hrs
1-8-20		6 of 8	7	2	2.3 hrs
1-22-20		6 of 8	7	2	1.4 hrs
2-5-20		7 of 8	11	4	3.0 hrs
2-26-20		7 of 8	8	1	1.4 hrs
3-11-20		7 of 8	3	0	1.8 hrs
3-25-20	Yes – COVID 19				
4-8-20		7 of 8	9	5	2.7 hrs
4-22-20	Yes – COVID 19				
5-13-20		8 of 8	3	0	1.5 hrs
5-27-20		7 of 8	4	4	1.6 hrs
6-10-20		8 of 8	34	19	2.0 hrs
6-24-20		7 of 8	15	2	3.4 hrs
7-8-20		7 of 8	16	8	3.3 hrs
7-22-20		8 of 8	13	6	1.9 hrs

Lee, Katherine

From: Klatt, Karen
Sent: Friday, September 11, 2020 10:16 AM
To: Klatt, Karen
Subject: Notice of Upcoming Public Hearing on the MHSA FY2020/2021 - 2022/2023 Three Year Plan
Attachments: NOTICE OF PUBLIC HEARING.docx

Greetings!

Attached and below you will find information on a Public Hearing that will be held for the City of Berkeley MHSA FY2020/2021 - 2022/2023 Three Year Plan. The Public Hearing is being held to obtain input into the MHSA Three Year Plan. The Public Hearing will be held during the Mental Health Commission Meeting on September 24th at 7:00pm, through the Zoom forum. Outlined below is information on how to participate in the Public Hearing:

Zoom Meeting Link: <https://zoom.us/j/97339470197>

Or Phone Number: 1-669-900-6833

Webinar ID: 973-3947-0197

To access the MHSA FY2020/2021 - 2022/2023 Three Year Plan, go to the City of Berkeley MHSA Webpage: https://www.cityofberkeley.info/Health_Human_Services/Mental_Health/MHSA_Plans_and_Updates.aspx

Thanks,

Karen

Karen Klatt, MEd
MHSA Coordinator
Mental Health Division
City of Berkeley

NOTICE OF PUBLIC HEARING
on the
City of Berkeley's
Mental Health Services Act (MHSA)
Fiscal Years (FY) 2020/2021 – 2022/2023
Three Year Plan

September 24, 2020 7:00pm
at the Berkeley/Albany Mental Health
Commission Meeting which will be held by
Zoom.

You can join through the following link:
<https://zoom.us/j/97339470197>

Or by phone:

1-669-900-6833

Webinar ID: 973-3947-0197

The Mental Health Services Act (MHSA) FY2020/2021 –
2022/2023 Three Year Plan can be reviewed on the MHSA
Webpage:

https://www.cityofberkeley.info/Health_Human_Services/Mental_Health/MHSA_Plans_and_Updates.aspx

For more information contact: Karen Klatt, (510) 981-7644
KKlatt@cityofberkeley.info

Lee, Katherine

From: Greenwood, Andrew
Sent: Friday, September 4, 2020 3:06 PM
To: Lee, Katherine
Subject: Emailing - Racially biased policing_ Can it be fixed_.pdf
Attachments: Racially biased policing_ Can it be fixed_.pdf

Ms. Lee,

Attached for the PRC's information is an article which was posted yesterday regarding CPE, which may be of some interest, and for which I was interviewed.

Here's the link, should anyone be interested in further exploring the "Knowable Magazine" site:

<https://www.knowablemagazine.org/article/society/2020/racially-biased-policing-can-it-be-fixed>

Best regards,

Andrew Greenwood
Chief of Police
Berkeley Police Department

SOCIETY

Racially biased policing: Can it be fixed?

Start with real-world data. Team up scholars and law enforcers. Focus on behaviors and situations. A coalition's anti-bias work sheds light on a way forward.

By Chris Woolston 09.03.2020

The killing of George Floyd by a white police officer in Minneapolis shook the nation and set off massive protests around the world over the last few months — putting unprecedented attention on racial bias in law enforcement. For [Phillip Atiba Goff](#), a social psychologist at the John Jay College of Criminal Justice in New York City, the tragedy hit especially close to home.

A Black man in a historically white field, Goff has been using every tool at his disposal — research, data and personal persuasion — for well over a decade now, to prevent unequal and unjust treatment of minorities at the hands of police. He has personally worked with police departments in dozens of US cities, including Minneapolis. The knee on Floyd's neck and the acts of police violence in Kenosha, Wisconsin, and elsewhere served as sobering reminders that his work was far from over. “This is what I do with my life,” he says. “The goal is fewer dead Black people and fewer Black folks in the hospital.”

Goff is the cofounder and director of the [Center for Policing Equity](#) (CPE), a national coalition of criminal justice scholars, law professors and former police officers. Part research hub, part advocacy organization and part boots-on-the-ground reform squad, the CPE is in the middle of one of society's most pressing issues. By some estimates, [police kill about 1,000 people annually](#), and those deaths aren't evenly distributed. Black men are [about 2.5 times more likely than white men](#) to die at the hands of the police, according to a 2019 analysis in the *Proceedings of the National Academy of Sciences*.



Phillip Atiba Goff, director and cofounder of the Center for Policing Equity, works to reduce police mistreatment of minorities.

CREDIT: CENTER FOR POLICING EQUITY

To understand police behavior, Goff and his colleagues combine real-world data with insights from the fields of social psychology and criminal justice. The CPE, founded in Los Angeles and now based in New York, has worked directly with more than 60 police departments across the country to help them evaluate — and in some cases, radically adjust — their treatment of African Americans and other people of color. Invariably, its investigations show room for improvement. A 2016 CPE report on combined findings from 12 departments around the country found that [Black citizens were more than 3.5 times more likely than white citizens](#) to be subjected to police force, ranging from bodily contact to pepper spray to shootings.

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THE MIND

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"I tell chiefs we're going to find disparities no matter what they're doing because disparities exist in everything we do in this country," says [Krista Dunn](#), a former deputy police chief in Salt Lake City who is now the CPE's senior director of law enforcement relations. "They have to be able to accept that if they want to work with us. The science is the science."

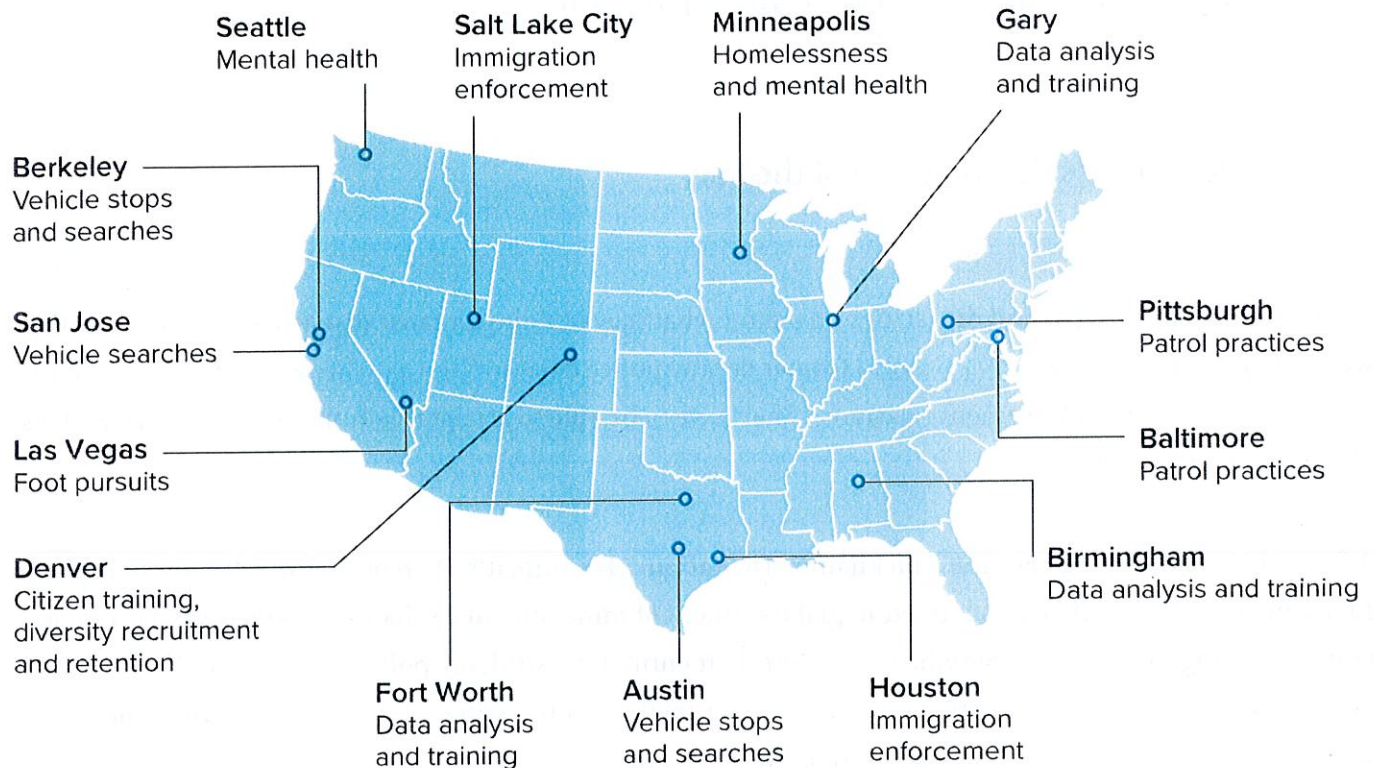
A few police chiefs have given Goff a nickname: "Dr. Racism." For him, it's a badge of honor. He was one of the first scholars to acknowledge that the unequal treatment of minorities at the hands of police was a problem worth studying. "We have people who have spent their entire lives studying policing and crime," he says. "When you ask them about race, they say, 'I don't have anything interesting to say about race.' That's not just an indictment of the data. That's an indictment of the field and the people in it."

Goff brought something new to the study of criminal justice partly because he himself was something new, says Kevin Drakulich, a criminal justice researcher at Northeastern University in Boston. "There's a real benefit to a diversity of perspectives that expands the kinds of questions we ask."

Growing up in the suburbs of Philadelphia, Goff says he learned quickly that some cops seemed to have it in for Black people. "I figured there were some good cops and some bigots," he says. As a scholar, he looks beyond those simple descriptions to explore the root causes of excessive force against minorities. As he and his coauthors describe in the *Annual Review of Law and Social Science*, cops who are inexperienced, under-trained, unsupervised and stressed out are the [most likely to lash out](#) at vulnerable people.

Goff's embrace of data and research undoubtedly changed policing, says David Harris, a law professor at the University of Pittsburgh and the author of *A City Divided: Race, Fear and the Law in Police Confrontations* (Anthem Press, 2020). "The Center for Policing Equity has been one of the most impactful organizations for police reform," he says. "The sheer force of [Goff's] charisma and personality, along with [CPE cofounder] Tracie Keese, got a whole bunch of police departments to sign up for their approach." The police, Harris says, deserve some of the credit. "A generation of leaders coming to the top are saying, 'We see we have problems. Maybe we should allow researchers to work with us.'"

Center for Policing Equity's work with forces across the nation



SOURCE: CENTER FOR POLICING EQUITY

KNOWABLE MAGAZINE

The CPE has addressed a variety of policing issues at departments across the United States, including these notable examples.

Indeed, Goff doesn't have to file lawsuits or otherwise push to investigate police departments. Chiefs invite him to investigate their departments' arrest records, use of force and overall engagement with minorities. Some chiefs, Goff says, are already aware that they have serious issues within their ranks. "They tell me behind closed doors that they have some bigoted officers," he says. "And they have new officers who never should have made it out of the academy. They want me to solve the problem."

But Goff says his focus isn't on erasing racist attitudes. Instead, he tries to understand the law enforcement culture, policies and practices that can turn bias into action. "I really don't care what kind of internal attitude you've got, as long as it never becomes a behavior," he says. Besides, he adds, accusations of racism can backfire. A 2019 survey of 784 police officers conducted by Goff and colleagues found that cops who were concerned about being labeled racist or having their legitimacy questioned [were also more likely to endorse violence and coercion](#) against civilians. The authors concluded that officers who feel negatively stereotyped are apt to use violence to regain a sense of control.

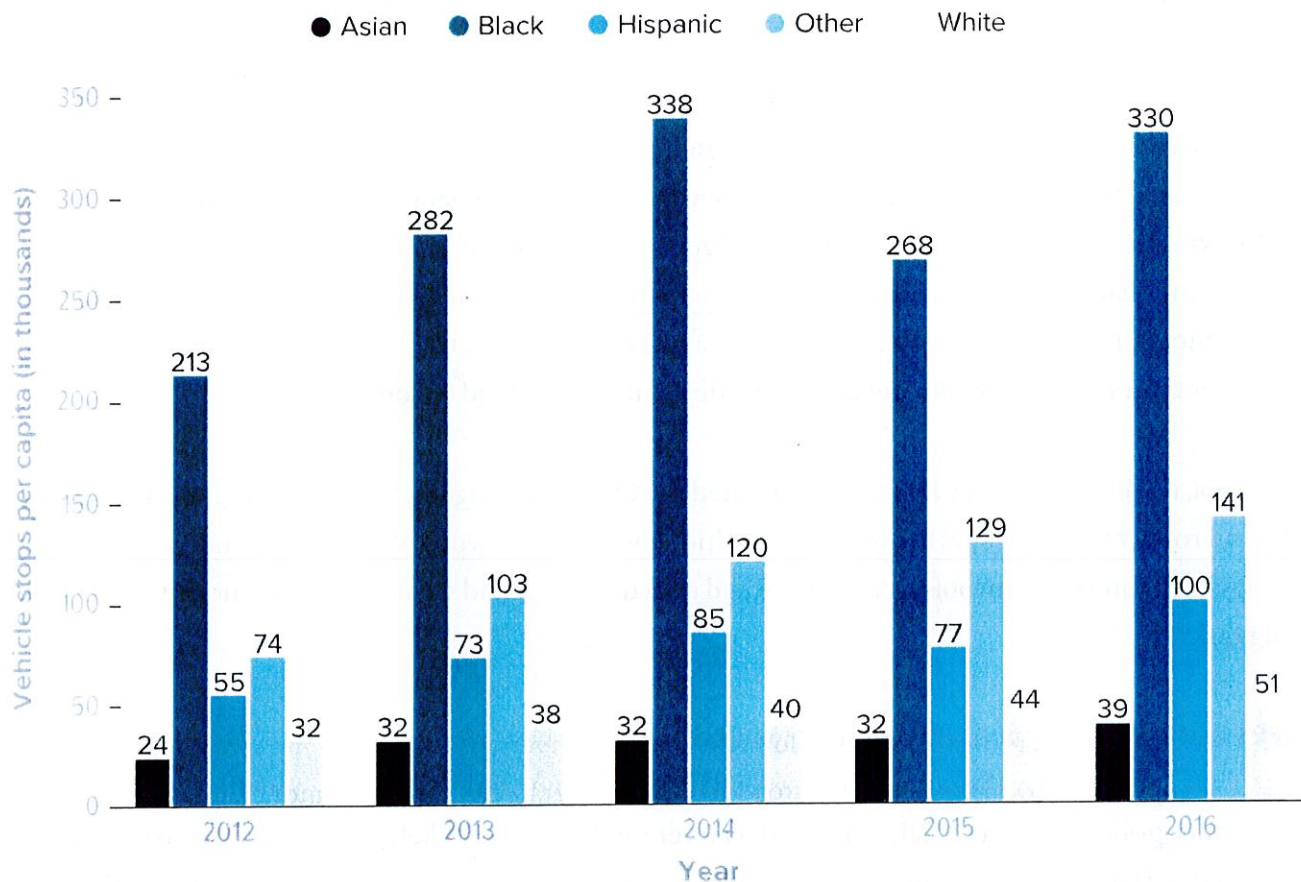
The best way to prevent the racist behavior of police officers is to avoid the type of situations that can bring them to light in the first place, Goff and his colleagues say. The CPE's investigations have found that potential triggers can [vary from place to place](#): too many high-adrenaline foot pursuits in Las Vegas, too many encounters with mentally ill people in Seattle, too much immigration enforcement in Salt Lake City. "American policing is hyper-local," Harris says. "You can't expect the Department of Justice to just tell all the police departments to take one approach." In his view, the CPE's city-by-city method is the best — though not a perfect — way to understand and address the issues.

Police chiefs who reach out to the CPE are eager to understand what's going on in their own departments, Dunn says. "They always tell me that they can't fix what they don't know." The data are often scattershot and shoddy, but CPE's experts can still spot important trends. A 2016 review of the Austin Police Department in Texas, for example, found that Black drivers were [about four times more likely](#) than white drivers to be pulled over and arrested. Officers used force against Black people at a rate roughly three times higher than Hispanics and six times higher than whites. (A spokesperson for the department declined to comment.)

In California, the Berkeley Police Department invited the CPE to investigate its force in 2015. "We had years of data but no robust analysis," says Berkeley Police Chief Andrew Greenwood, who was a captain at the time. "CPE has always been interested in looking at science and data to understand what's going on and how best to police. It's a big task."

The CPE's Berkeley report, published in 2018, found that [Black drivers were 6.5 times more likely than white drivers to be pulled over](#) by the police. Once stopped, Black drivers were four times more likely to be searched. However, once police search a vehicle, white drivers were about twice as likely as Black drivers to be arrested, suggesting that the bar was lower for pulling over Blacks than whites. "There's something going on there," Dunn says. "But we don't know why they were stopped. It warrants further investigation."

Berkeley police stop rates, by racial groups (2012-2016)



SOURCE: CENTER FOR POLICING EQUITY

KNOWABLE MAGAZINE

In a study by the Center for Policing Equity, Black and Hispanic drivers in Berkeley were more likely than white drivers to be pulled over. (Rates were calculated based on Berkeley Census data; the demographics of people driving through the city may differ, the report noted.)

The report caused a bit of a stir in Berkeley, but there are no hard feelings. “Goff is a good dude,” Greenwood says. “He reached out to me with some nice encouraging words the night of the George Floyd riots.” The respect between the CPE and the Berkeley department goes both ways. Greenwood is the “cream of the crop,” says Dunn, who led the CPE’s Berkeley investigation. “He has been 100 percent committed since Day One.” The relationship continues, and the CPE plans to complete a new report on Berkeley next year.

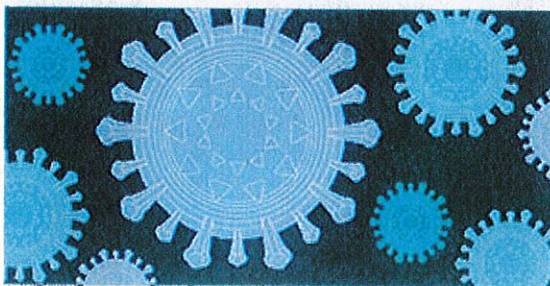
Greenwood does have some quibbles with the 2018 report: He notes that the calculations were based on Census data for Berkeley itself, which is less diverse than the surrounding area and the tens of thousands of people who pass through each day. Still, he took the results seriously. He says that the Berkeley Police Department is ramping up efforts to better understand racial disparities, including the outsized rates of pulling over Black drivers. Among other things, the department plans to start collecting data on the perceived race of a driver

before a stop.

The CPE report on the Berkeley department found relatively few instances of force used against anyone of any race: There were 14 documented blasts of pepper spray and 28 swings of a baton from 2012 to 2016. Notably, until one event in July, [Berkeley police hadn't fired a single shot at a suspect since 2012](#). (No one was injured in the recent shooting.) “Their use of force is really low,” Dunn says. “It’s a testament to their training, their policies and their culture.”

The department has high standards: It requires new officers to have at least [two years' worth of college coursework](#) in police science, psychology or a related field. Once hired, officers undergo [crisis-intervention training](#) that teaches how to de-escalate situations before they get too heated. As an extra layer of supervision, Greenwood says he reviews all body-cam footage after any use of force.

Body cameras and cell phone videos have definitely brought some bad behaviors to light, Goff says. But videos have their limits, as the CPE and others have found. A 2019 randomized control study involving more than 2,200 police officers in Washington, DC, reported that [wearing a body camera didn't meaningfully change behavior](#), including the use of force, over seven months or more. And a 2015 survey of Black Baltimore residents by members of CPE found that [body cameras did little to improve trust in the police](#). Many residents felt traumatized after seeing video of encounters that ended in death and violence, the report found, especially when police were never punished.



[Explore Knowable's coronavirus coverage](#)

De-escalation training, patience and supervision — the practices and approaches that seem to be working in Berkeley — could go a long way toward improving the cultures of police departments across the country, Goff says. “When we can direct behaviors, we’re removing discretion, and we’re reducing the number of decisions you have to make.” The goal, he adds, “is to create human management systems that short-circuit or interrupt the risk factors for engaging in discriminatory behaviors.”

Any attempt to rid a person — or a department — of bias would likely fail, says Kimberly Kahn, a social psychologist at Portland State University who has collaborated with Goff on several studies. She notes that

racial-sensitivity training programs, popular with departments throughout the country, have never been shown to change behavior dramatically. "It's a good step, but there's no training that magically takes away these

biases," she says. "They are [so ingrained](#)." (Anyone can explore their own implicit biases with [this online test](#) developed by Harvard researchers.)

Over the years, Kahn and other researchers have conducted video-game-like shooting simulations that consistently show participants — both police officers and civilians — are generally [quicker to pull the trigger](#) when confronted with a Black face. They are, for example, more likely to mistake a wallet or a cellphone for a gun if it's held by a Black man, and the darker the face, the greater the fear and the greater the chance for mistakes.

Though bias may run deep, biased actions can be minimized through practice and training, research suggests. A 2005 study of 50 police officers in Florida found that they were more likely to "shoot" unarmed Black men than white men in a simulation, but that [bias faded](#) after repeated practice with the program. Experienced cops also tend to show more restraint in the streets. A 2004 study of a police department in Southern California found that officers aged over 40 with more than five years of experience are [less than half as likely as younger, relatively inexperienced cops](#) to be investigated for excessive force.



In shooting simulations similar to this one used in an FBI training exercise, participants are generally quicker to pull the trigger on Black people. <https://www.knowablemagazine.org/article/society/2020/racially-biased-policing-can-it-be-fixed>

including those who are unarmed.

CREDIT: PHOTO BY DAVID MCNEW / GETTY IMAGES

To better understand the big picture, Goff and colleagues at the CPE are compiling statistics from their investigations into a [National Justice Database](#). As more data come in, police departments could see how they stack up and where they need to improve. With no federal database that tracks use of force or even fatalities, such comparisons are now difficult. By showing chiefs the reality of racial disparities in their own ranks, the CPE is laying the groundwork for reform, Harris says. “When we look back in 10 or 20 years, we’ll see the center as one of those places where new thinking and new leadership began to take hold, even if there were some colossal failures along the way.”

After all of his work — the scholarly research, the data deep dives, the hours of conversation with police chiefs and officers — Goff said the death of George Floyd was a “gut punch.” The location, Minneapolis, only added to the pain. Goff and his team had visited the Minneapolis Police Department in 2015, and for a while it seemed like a success story. With input from the CPE, the city had provided more social workers to engage with the homeless and the mentally ill, leaving the police to other tasks. Goff [discussed the Minneapolis experience](#) in a 2019 TED Talk titled “How We Can Make Racism a Solvable Problem — and Improve Policing” that has been viewed more than 2 million times.

In Minneapolis, “we made real changes, not just in the policy and training but in the culture,” Goff says. That progress clearly wasn’t enough to save Floyd or erase bias-driven behavior in the department. A *New York Times* analysis found that, in the years since the CPE intervention in 2015, Minneapolis police [were at least seven times more likely to use force](#) during encounters with Black citizens than with white citizens. “Nobody who does this work ever feels that it’s sufficient to address the scale of the problem,” Goff says. “You have to fail every day, and you get up and try to do it better the next day.”

The days ahead look promising. In the wake of the Floyd killing, Dunn says that she has received a flurry of queries from police departments seeking help. And in recent months, the CPE has received several large donations to support its work, including \$1 million each from [YouTube](#) and [Reed Hastings](#), the founder of Netflix.

More important, Goff says the protests led by Black Lives Matter and other activist groups — over Floyd’s death and the shootings of other Black Americans like Breonna Taylor and Jacob Blake — have sharpened the focus on the racially problematic history of policing in the US, forcing departments everywhere to think about new approaches. And the CPE will be there to help show the way. “If there’s ever a new world where we can reimagine how public safety looks,” Goff says, “it will be because the protests made us do it.”

10.1146/knownable-090320-1

Chris Woolsten is a freelance science writer living in Billings, Montana.

<https://www.knowablemagazine.org/article/society/2020/racially-biased-policing-can-it-be-fixed>

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Lee, Katherine

From: Mike Chang <michaelchang1942@gmail.com>
Sent: Sunday, September 6, 2020 12:50 AM
To: Lee, Katherine
Subject: Daniel Prude: Grand jury to investigate 'spit hood' death - BBC News

Follow Up Flag: Follow up
Flag Status: Completed

WARNING: This email originated outside of City of Berkeley.
DO NOT CLICK ON links or attachments unless you trust the sender and know the content is safe.

<https://www.bbc.com/news/world-us-canada-54044838>

<https://www.bbc.com/news/world-us-canada-54044838>

Daniel Prude: Grand jury to investigate 'spit hood' death

6 September 2020

New York's attorney general has said a grand jury will be formed to investigate the death of Daniel Prude, an unarmed black man who suffocated after being restrained by police.

Mr Prude - who suffered from mental health issues - died after officers put him in a "spit hood", designed to protect police from detainees' saliva.

Protests have been held after footage of the incident in Rochester emerged.

Seven police officers have been suspended.

The 41-year-old died in March however his death has only just been reported.

Attorney General Letitia James said in a statement: "The Prude family and the Rochester community have been through great pain and anguish. My office will immediately move to empanel a grand jury as part of our exhaustive investigation into this matter."

The move has been welcomed by Rochester Mayor Lovely Warren and New York Governor Andrew Cuomo. But a spokeswoman for the Rochester Police Department declined to comment.

Mr Prude's brother, Joe, told the New York Times: "I am ecstatic about this. But right now I'm still waiting on seeing the indictment and them being prosecuted to the full extent of the law."

What happened to Daniel Prude?

Joe said he called police on 23 March as Daniel was showing acute mental health problems. When officers arrived, he had been running naked through the streets.

In body camera footage obtained from the police by Mr Prude's family, he can be seen lying on the ground as officers restrain him. While sitting on the road, he becomes agitated, alternately asking for money or a gun.

He began spitting on the street, but does not appear to offer any physical resistance, according to the footage. An officer says that Mr Prude told them he had Covid-19, and they place the spit hood on him.

One officer can be seen pressing down on Mr Prude's head with both hands, saying "stop spitting". Mr Prude stops moving and goes quiet, and officers note he feels cold.

Paramedics are called and Mr Prude is taken to hospital. His family took him off life support a week later.

The medical examiner ruled his death as a homicide caused by "complications of asphyxia in the setting of physical restraint", with intoxication by the drug PCP, a contributing factor.

Mayor Warren said the city police chief had failed to inform her of the case until the beginning of last month.

But police chief La'Ron Singletary denied that his department had been trying to keep the details out of public view, and Michael Mazzaeo, president of the Rochester Police Locust Club, said the officers had followed their training "step by step".

The officers were only disciplined after the footage was released, five months after Mr Prude's death. Protests in the city have taken place nightly since the release of the footage.

Mr Prude's death came two months before that of George Floyd, whose killing while in police custody sparked widespread outrage and incited national and international demonstrations against police brutality and racism.

<https://www.nytimes.com/2020/09/08/opinion/police-reform-biden.html>

Opinion

It Is Possible to Reform the Police

How to end the racial disparity in vehicle stops.

By Neil Gross

Dr. Gross is a sociologist.

Sept. 8, 2020

In his speech last week in Pittsburgh, Joe Biden pushed back against Donald Trump's mischaracterization of him as soft on crime and beholden to progressives intent on defunding or abolishing police departments. He pledged to work with mayors and governors to tamp down violence. He also vowed to make progress on police reform, invoking the names of Breonna Taylor, George Floyd and Jacob Blake, and the cause of racial justice for which they have come to stand.

Mr. Biden's remarks were powerful. So far, however, he has not been very specific about his plans for reforming the police, beyond calling for federal oversight of troubled departments, stricter use-of-force standards and more money for community policing. While this no doubt reflects a political calculus that it is better to emphasize character than policy details, it also speaks to a sense of uncertainty in Democratic circles: How can the police be meaningfully reformed?

There's a substantial body of social science research that provides answers. Consider, as an example, research on how to reduce racial disparities in vehicle stops.

Police officers in the United States pull over more than 19 million vehicles annually, making vehicle stops the No. 1 reason for contact between citizens and the police. Studies carried out over many years show that Black drivers are stopped disproportionately, a gap that cannot be accounted for by factors like differential driving behavior or greater poverty, which might translate into more cars on the road with equipment violations. Research also suggests that when Black drivers are pulled over, they tend to be treated less respectfully by the police and are given less leniency.

The latest study to document these patterns comes from the computer scientist Emma Pierson and her colleagues at the Stanford Open Policing Project, who analyzed data on vehicle stops from 21 state patrol agencies and 35 city police departments from 2011 to 2018. The researchers found that Black drivers were stopped about 43 percent more often than their white counterparts, relative to their share of the population.

To assess the role of police bias, the Stanford team compared stops that took place during daylight hours — when, at least in principle, it would be easier for officers to observe a driver's skin color — to those that occurred at night. Stops of Black people were higher during the day. The study also found that Black and Latino drivers had their cars searched twice as often as white drivers, though Black and white drivers were about equally likely to be found with drugs or guns in their possession, and Latino drivers were less so.

Frequent, intrusive vehicle stops aren't just an inconvenience. Beyond being a source of legal and even physical peril, and something that can get in the way of economic

opportunity (since many jobs require travel by car), such stops, according to other studies, are a potent reminder to Black Americans of all the ways in which the full rights of citizenship remain denied to them.

A variety of “bias processes” influence the disproportional stops of Black drivers, according to research by the sociologist Patricia Warren and her colleagues. These include explicit racial profiling, implicit associations police officers may hold between blackness and criminality, and police deployment patterns in minority neighborhoods. But biases can be curbed through institutional redesign.

One thing that would make a big difference would be to end “pretextual” traffic stops. These are stops where a police officer harbors some vague suspicion that a driver may be involved in criminal activity — a suspicion so vague that it wouldn’t hold up in court. The officer makes the stop anyway, using as a pretext that the driver has violated a minor rule of the road. In 1996, the U.S. Supreme Court ruled this practice constitutional. Police officers now routinely make pretextual stops of minority (as well as other) drivers.

In the state of Washington, however, pretextual stops were banned in 1999 when the state Supreme Court ruled that such stops violated Washington’s constitution — before changing its mind in a 2012 case, *State v. Arreola*. This gave the legal scholar Stephen Rushin and the economist Griffin Edwards an opening. They compared stops made by the Washington State Patrol in the period when pretextual stops were disallowed to those made after the *Arreola* decision. Sure enough, racial disparities rose significantly when troopers were given the legal authority to stop drivers on pretext. Vague suspicions turn out to be a prime outlet for bias.

If state legislatures and police departments nationwide were to prohibit pretextual vehicle stops, with the prohibition taken seriously in police training, organizational culture and disciplinary procedures, police officers would be blocked from acting on some of their worst instincts. Banning pretextual stops would free officers to focus their attention on serious traffic safety violations or on stops based on more than a hunch of criminality — a better use of police resources. Since random pretextual stops rarely turn up evidence of serious crime, the effect on crime rates would most likely be minimal, just as the end of “stop and frisk” in New York City did not increase crime there.

A second strategy would be to require written consent when an officer asks permission to search a driver’s car. (If the officer has probable cause, no consent is needed.) Starting in 2012, three cities in North Carolina — Fayetteville, and later Durham and Chapel Hill — instituted policies, with varying degrees of commitment, requiring written rather than verbal consent. Three political scientists — Frank Baumgartner, Derek Epp and Kelsey Shoub — examined what happened as a result: The number of cars searched following a traffic stop dropped precipitously.

The reason is simple. Written consent forms explain to motorists what their rights are, giving some of them the courage to tell the police no. This changes the incentive structure for police officers looking to stop cars as part of a fishing expedition for contraband.

By themselves, written consent forms won't eliminate racial disparities in traffic stops. The police department in Austin, Texas, for example, has used these forms since 2012 and continues to stop Black drivers disproportionately. But by reducing the frequency of vehicle searches, consent forms make the experience of being stopped less onerous. It's one thing to be pulled over and ticketed, quite another to have your car rifled through.

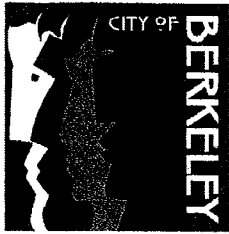
A third reform has even more potential. Police departments these days are under considerable pressure to track racial disparities in their operations. Yet little is done with this information.

Research by the sociologist Emilio Castilla on how to achieve greater gender and racial equity in employee pay shows that if you want to move an organization away from biased practices, transparency and accountability are key. If everyone in a company knows how well each of its different units is faring on diversity and equity metrics, managers will be motivated to make sure that their own unit doesn't fall behind.

Though police unions might resist, police departments could leverage this same principle. On a monthly basis, they could generate statistics showing how officers on particular patrol shifts or in specific precincts are doing at stopping drivers proportional to their demographic representation in the community. Such statistics should be made available for everyone to see on a public-facing dashboard. Sergeants and other supervisors could then be evaluated by how well they manage the behavior of their officers to ensure equity.

These three changes — banning pretextual stops, requiring written consent for searches and holding supervisors accountable for the inequitable behavior of their officers — could bring greater justice to our roads. They represent the kind of sensible, research-based policy fixes to policing that are long overdue.

Neil Gross is a professor of sociology at Colby College.



Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING**

**Wednesday, September 9, 2020
7:00 P.M.**

**PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY
THROUGH VIDEOCONFERENCE AND TELECONFERENCE**

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, this meeting of the City of Berkeley Police Review Commission will be conducted exclusively through teleconference and Zoom videoconference and there will not be a physical meeting location available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/87070468124>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial 1 **669 900 6833** and enter Meeting ID **870 7046 8124**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

AGENDA

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the PRC's jurisdiction at this time.)

- 4. APPROVAL OF MINUTES**

Regular meeting of July 22, 2020.

- 5. CHAIR'S REPORT**

Report on Mayor's Workgroup; other items.

6. PRC OFFICER'S REPORT

Status of complaints; report on NACOLE Conference; other items.

7. CHIEF OF POLICE'S REPORT

Crime, budget, staffing, training updates, other items.

8. SUBCOMMITTEE REPORTS (discussion and action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Police Acquisition & Use of Controlled Equipment.
- b. Outreach Subcommittee.
- c. Lexipol Policies Subcommittee.

9. OLD BUSINESS (discussion and action)

- a. Berkeley Police Department policies on conducting searches of detainees on probation or parole: consider BPD's response to PRC's recommendation passed on February 5, 2020.

10. NEW BUSINESS (discussion and action)

- a. Review draft PRC Work Plan for 2020-2021.
 - i) Review latest update of tasks and decide whether to update.

From: PRC Officer

- b. Policy complaint #2475: Consider whether to accept the complaint, regarding conditions and alleged illegal activity around Ashby Avenue near Shellmound and Bay Streets, and determine how to proceed.

11. PUBLIC COMMENT

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on the agenda at this time.)

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the PRC will recess into closed session to discuss and take action on the following matter(s):

12. INFORMAL COMPLAINT FILED AUGUST 9, 2020 REGARDING INCIDENT OCCURRING AUGUST 5, 2020, AT A UNIVERSITY AVENUE BUSINESS.

End of Closed Session

13. ANNOUNCEMENT OF CLOSED SESSION ACTION

14. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary via email for further information. City offices are currently closed and cannot accept written communications in person.



Communication Access Information (A.R.1.12)

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

SB 343 Disclaimer

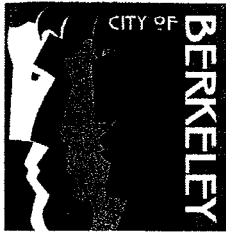
Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public by being posted on the Police Review Commission's web page within three business days of the meeting.

Contact the Police Review Commission at prc@cityofberkeley.info.

**PRC REGULAR MEETING ATTACHMENTS
SEPTEMBER 9, 2020**

<u>MINUTES</u>	
July 22, 2020 Regular Meeting Draft Minutes.	Page 7
<u>AGENDA-RELATED</u>	
Item 9.a. – Probation and Parole Searches – policy approved.	Page 11
Item 9.a. – Subcommittee recommendation re Searches of Individuals on Probation, Parole or Other Supervised Release Status.	Page 13
Item 9.a. – Asking the Probation or Parole Question – policy approved.	Page 17
Item 9.a. – Email dated 8-27-20 re Human Rights report, attaching summary.	Page 19
Item 10.a. – Police Review Commission draft 2020-2021 Work Plan.	Page 25
Item 10.a.i) – Tasks ranked by Commissioners December 2018 – updated 9-3-2020.	Page 31
Item 10.b. – PRC Policy Complaint #2475.	Page 33
<u>COMMUNICATIONS</u>	
7-23-20 Annotated Agenda Special Meeting of the Berkeley City Council. Action Calendar 3. Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force.	Page 35
7-23-20 PRC PowerPoint presentation: Proposed Policy 300 – Use of Force for Berkeley Police Department.	Page 43
7-23-20 Supplemental Communications and Reports 2 and 3, Berkeley City Council Special Meeting. Action Calendar, Item #3: Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force. (Lists only.)	Page 49
Resolution No. 69,531 N.S. Adopt a Resolution Implementing Core Police Accountability Board and Director of Police Accountability Functions by July 1, 2021.	Page 53
7-27-20 Memo to the Mayor and Councilmembers from the PRC Chairperson re: Implementing Core Police Accountability Board and Director of Police Accountability functions by July 1, 2021 (Consent Calendar Item #32 on the City Council's July 28, 2020 agenda.)	Page 55
7-23-20 Use of Pepper Spray Incident.	Page 57

8-19-20 Memo and attachment re Berkeley Independent Redistricting Commission.	Page 61
8-21-20 Email re Commissions and Election Activities.	Page 75
7-29-20 Email re MHSA Three Year Plan Community Input Meeting Presentation.	Page 79
8-25-20 Email re Mental Health Services Act (MHSA) FY2020/21 – FY2022/23 Three Year Program and Expenditure Plan.	Page 81
7-27-20 Email re 2020 RIPA Report and attachment (excerpt – Executive Summary.).	Page 83
8-13-20 Email from POLICING EQUITY announcing discussion: From Police Reform to a New Public Safety Model.	Page 99
August 2020 Audit News from the Berkeley City Auditor.	Page 101
6-18-20 Article from the San Francisco Chronicle: Judge restricts Oakland's use of tear gas, rubber bullets during protests.	Page 103
Temporary Restraining Order dated June 18, 2020, in <i>Anti Police-Terror Project v. City of Oakland</i> .	Page 105
7-29-20 Article from SF Chronicle: For foreseeable future, Oakland police restricted in use of force during protests.	Page 109
7-29-20 Article from SFGATE: 'Defund the police' in action: How four Bay Area cities are (or aren't) reforming their police.	Page 111
8-16-20 Article from www.sfchronicle.com re: Berkeley's bold vision for the future of policing.	Page 117
8-29-20 Article from The San Diego Union-Tribune: Murder charge of ex-San Diego County sheriff's deputy first in state under new law.	Page 123
8-29-20 Article from www.washingtonpost.com : There's a reason it's hard to discipline police. It starts with a bill of rights 47 years ago.	Page 127
9-1-20 Article from Berkeleyside: Berkeley police release video of officer shooting at vehicle after robbery.	Page 131



Police Review Commission (PRC)

DRAFT

**POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(draft)**

**Wednesday, July 22, 2020
7:00 P.M.**

No physical location; meeting held exclusively through videoconference and teleconference.

1. CALL TO ORDER & ROLL CALL BY CHAIR KITTY CALAVITA AT 7:05 P.M.

Present: Commissioner Kitty Calavita (Chair)
Commissioner Nathan Mizell (Vice-Chair)
Commissioner Gwen Allamby
Commissioner Michael Chang
Commissioner Juliet Leftwich
Commissioner Elisa Mikiten
Commissioner George Perezvelez
Commissioner Ismail Ramsey

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: None

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

3. PUBLIC COMMENT

There were 4 speakers.

4. APPROVAL OF MINUTES

Regular meeting of June 24, 2020; Special meeting of June 29, 2020; and Regular meeting of July 8, 2020.

The minutes of the June 24, 2020 regular meeting, June 29, 2020 special meeting, and July 8, 2020 regular meeting were approved by general consent.

5. CHAIR'S REPORT

Chair Calavita reported:

- NACOLE Conference has begun; still time to register. Several Commissioners attended legal updates session yesterday; very informative.
- Mayor's Workgroup on Fair & Impartial Policing continues meeting every other Wednesday. Listened to many guest speakers and much discussion about data and data analysis. Beginning to prioritize possible policy recommendations. Speakers at next meeting: Scott Meadors, former Stockton police captain, who trains on implicit bias, procedural justice, community-police trust-building; and Brandon Anderson, founder of Raheem, a non-profit seeking to end police violence in Oakland; named for founder's partner, shot by Oklahoma police in 2007.
- Tomorrow night Council will discuss proposed use of force policy. Several Commissioners will present a PowerPoint. Thank everyone who worked so hard, including UOF Subcommittee, BPD, full Commission, and PRC Officer.

6. PRC OFFICER'S REPORT

The PRC Officer reported:

- Council's special meeting tomorrow begins at 6:00 p.m. Supplemental items were published by Clerk late afternoon, including the City Manager's (Police Chief's) companion report, and Councilmember Harrison's proposed revisions.
- No one from BPD present this evening because this morning a young police officer in field training was discovered dead; Chief and others busy handling that.
- No new cases filed since your last meeting. Will be scheduling a Board of Inquiry hearing for mid-August or September; Mr. Norris will be contacting Commissioners to serve.
- Also encourage commissioners to sign up for NACOLE Conference sessions.
- In agenda packet is annotated agenda from the July 14 Council meeting regarding the "omnibus" item on re-imagining policing. Expect some role for PRC in the future.
- At Council Public Safety Committee meeting on July 20, Councilmember Robinson withdrew his proposed "right to public identification" measure, based on feedback from the PRC and others, and may or may not bring it back. CM Robinson amended his other item, to disqualify officer applicants with certain disciplinary records from being hired, to delete the language regarding unsustained complaints, which PRC found problematic; Committee approved the modified proposal to submit to Council with a positive recommendation.
- Next regular meeting of the PRC is Sept. 9, 2020.

7. CHIEF OF POLICE'S REPORT

None.

8. SUBCOMMITTEE REPORTS (discussion and action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Outreach Subcommittee – Next meeting to be scheduled.
- b. Lexipol Policies Subcommittee – Awaiting availability of BPD staff.
- c. Use of Force Subcommittee – Dissolve or renew.

The Use of Force Policy Subcommittee was renewed by general consent.

9. NEW BUSINESS (discussion and action)

- a. Determine approach to referral from City Council Agenda & Rules Committee to make a recommendation on a proposed ordinance to Regulate Police Acquisition and Use of Controlled Equipment.

By general consent, the rules were suspended to allow John Lindsay-Poland to address the Commission and answer questions.

Presentation by Mr. Lindsay-Poland.

Motion to form a subcommittee that will meet to study the proposed ordinance and report back to the PRC in September.

Moved/Second (Mikiten/Calavita) **Motion Carried**

Ayes: Calavita, Chang, Leftwich, Mikiten, Mizell, Perezvelez, and Ramsey.

Noes: None

Abstain: Allamby

Absent: None

The Chair appointed Commissioners Mikiten, Mizell, and Leftwich to this Subcommittee.

- b. Consider a response, if any, to City Council item on July 28 agenda on Implementing Core Police Accountability Board and Director of Police Accountability Functions by July 1, 2021.

Motion to express to the City Council the PRC's support for implementing the core Police Accountability Board and Director of Police Accountability Functions by July 1, 2021, if the ballot measure to amend the Charter passes.

Moved/Second (Mizell/Perezvelez) **Motion Carried**

Ayes: Calavita, Chang, Leftwich, Mikiten, Mizell, Perezvelez, and Ramsey.

Noes: None

Abstain: Allamby

Absent: None

- c. Discuss whether to hold a Special Meeting on August 5, 2020, to consider the probation and parole searches policy.

(Discussed; no action taken.)

10. PUBLIC COMMENT

There were 2 speakers.

11. ADJOURNMENT

By general consent, the meeting was adjourned at 8:59 p.m.

Probation and Parole Searches

Policy recommendation approved by the PRC Feb. 5, 2020

Searches of individuals on supervised release shall only be conducted based on the totality of the circumstances, as indicated below.

Non-Violent Offenses. When officers contact a person on supervised release for a non-violent offense during a vehicle, bicycle or pedestrian stop and there are no articulable facts that demonstrate the individual is connected in some way to criminal activity, or that the person is a threat to officers or others, officers shall not conduct a search of that person and/or their vehicle pursuant to any supervised release search clauses or conditions.

“Non-violent offenses” are offenses in which violence, the threat of violence, or the use of a weapon is not a factor. Examples include possession of controlled substances or property crimes such as petty theft and burglary.

Violent Offenses. Notwithstanding the above, persons contacted or detained who are on supervised release for violent offenses may be searched pursuant to the terms of their supervised release conditions.

“Violent offenses” involve the use of force, the threat of force, the use or possession of a weapon, sexual violations against the person of another, human trafficking, robbery, and first-degree burglary.

The motion included an understanding that the Police Department is encouraged to return with proposed revisions by the PRC’s March 25, 2020 meeting.

Searches of Individuals on Probation, Parole or Other Supervised Release Status

Submitted by the PRC Subcommittee on Probation and Parole Searches

Background

In California, three types of warrantless searches are permitted by law: searches justified by reasonable suspicion of criminal activity; consent searches; and, "Fourth Waiver" searches. The latter refer to searches of the person or property of people on parole, probation, Post Release Community Supervision (PRCS), or other supervised release status. There are a few differences among these statuses: for example, parolees are subject to search as a result of state law, and people on probation are often required by the judge as a condition of their probation to submit to search. However, the differences are not relevant here and we will refer to all these statuses as "Supervised Release."

California is one of only nine states that allow police officers to do suspicionless searches of those under supervised release (two other states allow it if there is a request from a parolee or probationer's supervising officer). California's neighboring states of Nevada and Oregon prohibit such suspicionless searches.

California was the first state to insert a provision in its penal code allowing warrantless searches of parolees, with Section 3067 in 1996 requiring parolees to agree to be subject to warrantless searches as a condition of their parole. Historically, many court cases are pertinent to the topic. In 1987, the U.S. Supreme Court in Griffin v. Wisconsin specified that only a Probation Officer could conduct warrantless searches of a probationer and based their decision on the "special needs" of Probation Officers for close supervision of their charges. In 1998, the California Supreme Court in People v. Reyes held that suspicionless searches of parolees by police officers do not violate the Fourth Amendment. In 2001, the U.S. Supreme Court held in U.S. v. Knights that the warrantless search of a probationer's apartment by a police officer, based on reasonable suspicion, was constitutional. It was not until 2006 that the U.S. Supreme Court validated suspicionless searches of parolees or probationers by any law enforcement officer day or night. The only law enforcement restriction in Samson v. California is the continued prescription against "arbitrary, capricious, or harassing searches." In that case, Justice Clarence Thomas wrote the opinion sanctioning what dissenter Justices Stevens, Souter and Breyer called "an entirely suspicionless search unsupported by any special need."

In sum, BPD officers' suspicionless searches of individuals on supervised release is consistent with current law, unless the searches are "arbitrary, capricious, or harassing."

There is concern, however, that entirely suspicionless searches of persons who are on supervised release are a factor contributing to racial disparities. The fact that Whites who are searched by the BPD are *more* often found to be engaged in criminal activity than are Blacks or Latinos suggests that people of color may be more likely than Whites to be asked whether they are on probation or parole and therefore potentially subject to Fourth Waiver searches and/or that a higher standard of suspicion is

being exercised for Whites. Either way, the result is that Blacks and Latinos are disproportionately subjected to searches, the yield rate of which is disproportionately low.

At their April 24, 2018 City Council meeting, the Berkeley City Council agreed on consent to “Review and Update BPD Policy Surrounding Inquiries to Parole and Probation Status” as per the PRC 2017 Report “To Achieve Fairness and Impartiality,” and asked the City Manager and BPD to review those policies. While there appears to have been no concrete action on that front, this Subcommittee represents an effort to proceed.

It is noteworthy that as this Subcommittee initiated its proceedings, the Oakland Police Department had opened similar discussions, collaborating with the Oakland Police Commission to develop new policies relating to asking about one’s supervised release status and subsequent searches of those on supervised release. In July 2019, the Oakland City Council unanimously passed the Oakland Police Commission’s recommended policy changes restricting these questions and searches.

Proposed Policy Changes

(changes in Italics)

1. **Inquiring about Supervised Release Status.** When a police officer inquires of an individual, “Are you on probation or parole?”, it potentially opens the door for a suspicionless search as described above. It also sends a message: in communities of color, the question signals that the police believe the person may have committed crimes for which they could be on probation or parole, an assumption that is not applied to Whites. Often it is taken as a sign of disrespect, may erode police legitimacy and trust in communities of color, and potentially hinders the reintegration of parolees, probationers and others on supervised release by underscoring their continued marginal status.

THEREFORE:

Officers should not ask if a person is on probation or parole if the person has correctly identified themselves either verbally or by presenting identification documents. When officers determine it to be necessary, probation or parole status shall be checked by radio or mobile records.

If officers need to ask the question, “Are you on probation or parole?”, the officer should ask respectfully and consider that people may take offense at the question. Officers should only ask when necessary: 1) to protect the safety of others, the person detained, or officers; 2) to forward a legitimate law enforcement investigative purpose (for example, sorting out multiple computer returns on common names); or 3) to confirm probation and parole status subsequent to a records check.

2. **Warrantless Searches of Individuals on Supervised Release Search Conditions.** According to California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their release. However, such searches shall be conducted only to further a legitimate law enforcement purpose, and shall not be arbitrary, capricious, or harassing.

Considerable data suggest that searches are disproportionately conducted on people of color. Dr. Jennifer Eberhardt and her colleagues at the Stanford Open Policing Project have collected the most comprehensive data nationwide on 100 million traffic stops over 7 years in 29 police departments and found evidence of pervasive inequality in who gets stopped and searched. The Center for Policing Equity found that the BPD does better than most departments on this score, but that even here Black motorists who are stopped are four times more likely to be searched than Whites who are stopped, with the rate only slightly lower for Latinos. This disparity erodes trust in the police in communities of color and further marginalizes and hinders reintegration of those on post-release status.

THEREFORE:

Searches of individuals on supervised release shall only be conducted based on the totality of the circumstances, as indicated below.

Non-Violent Offenses. *When officers contact a person on supervised release for a non-violent offense during a vehicle, bicycle or pedestrian stop and there are no articulable facts that demonstrate the individual is connected in some way to criminal activity, or that the person is a threat to officers or others, officers shall not conduct a search of that person and/or their vehicle pursuant to any supervised release search clauses or conditions.*

“Non-violent offenses” are offenses in which violence, the threat of violence, or the use of a weapon is not a factor. Examples include possession of controlled substances or property crimes such as petty theft and burglary.

Violent Offenses. *Persons contacted or detained who are on supervised release for violent offenses may be searched pursuant to the terms of their supervised release conditions.*

“Violent offenses” involve the use of force, the threat of force, the use or possession of a weapon, sexual violations against the person of another, human trafficking, and robbery.

Asking the Probation or Parole Question

Policy recommendation approved by the PRC Dec. 11, 2019

Provided for information only Sept. 9, 2020

Officers should not ask if a person is on probation or parole if the person has correctly identified themselves either verbally or by presenting identification documents. When officers deem it necessary to determine probation or parole status, officers shall conduct a records check.

Officers should only ask when necessary: 1) to protect the safety of others, the person detained, or officers; 2) to forward a legitimate law enforcement investigative purpose (for example, sorting out multiple computer returns on common names); or 3) to confirm probation and parole status subsequent to a records check. If officers need to ask the question, "Are you on probation or parole?" the officer shall ask respectfully and consider that people may take offense at the question.

Lee, Katherine

From: Kitty Calavita <kccalavi@uci.edu>
Sent: Thursday, August 27, 2020 11:37 AM
To: Lee, Katherine
Subject: Human Rights report

Follow Up Flag: Follow up
Flag Status: Flagged

WARNING: This email originated outside of City of Berkeley.
DO NOT CLICK ON links or attachments unless you trust the sender and know the content is safe.

Hi Kathy:

Could you please share this report with PRC Commissioners? It is indirectly related to the Probation and parole search issue although not specific to California or Berkeley. Especially pertinent is the section on who is on probation/parole (unfortunately there are no page numbers in this 220+ report!).

Thanks.

Kitty

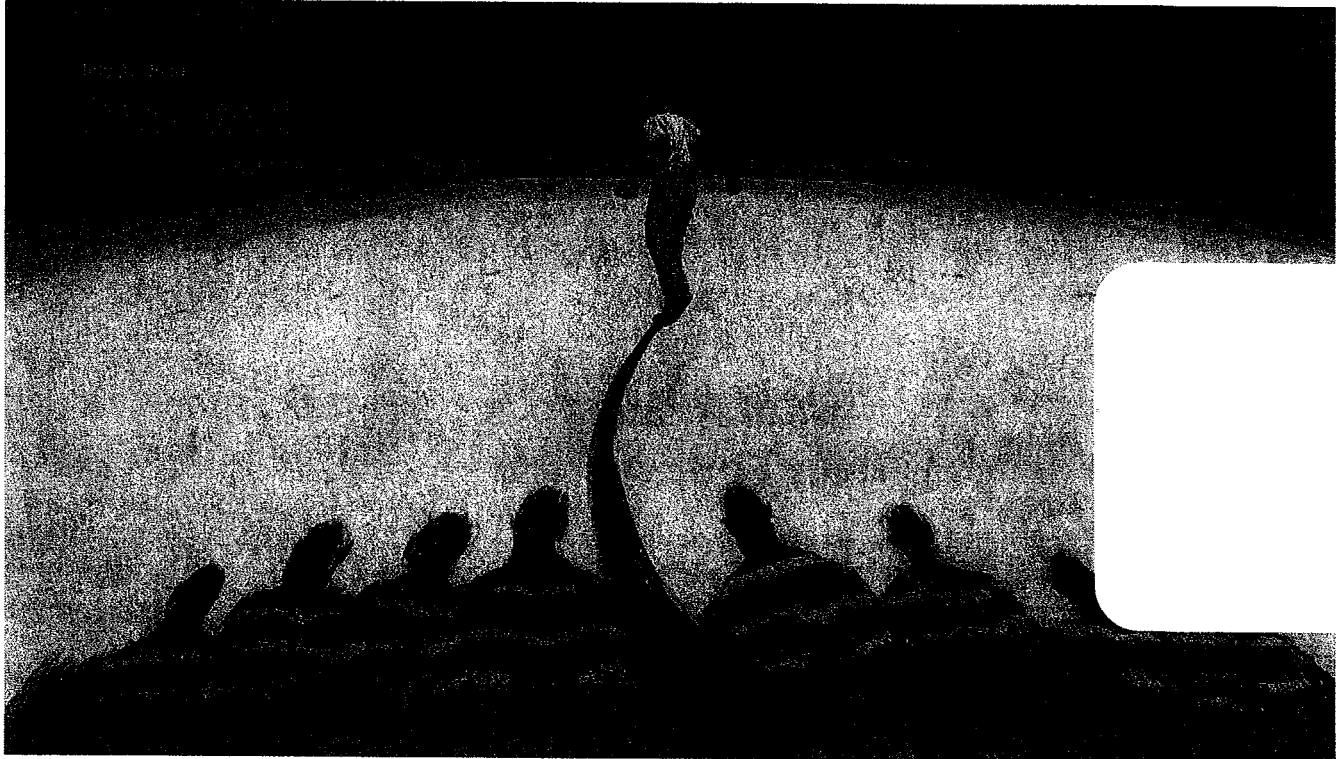
<https://www.hrw.org/report/2020/07/31/revoked/how-probation-and-parole-feed-mass-incarceration-united-states>

(First 3 pages, containing summary, attached to PRC agenda packet.)



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Summary

[Probation is] like a prison sentence outside of jail. You walk around with a rope tied around your leg to the prison door. Anything can lead to revocation.

—James Yancey, Georgia defense attorney

I asked for programs but . . . [probation] didn't want to hear that I need help; they just gave me time.

—Monique Taylor (pseudonym), who has served years on probation in Pennsylvania for conduct related to a long-standing drug dependence

Probation, parole, and other forms of supervision are marketed as alternatives to incarceration in the United States. Supervision, it is claimed, will keep people out of prison and help them get back on their feet.



Throughout the past 50 years, the use of probation (a sentence often imposed just after conviction) and parole (served after incarceration) has soared alongside jail and prison populations. As of 2016, the last year for which supervision data is available, 2.2 million people were incarcerated in United States jails and prisons, but more than twice as many, 4.5 million people—or one in every 35—were under supervision. Supervision rates vary vastly by state, from one in every 168 people in New Hampshire, to one in every 18 in Georgia.

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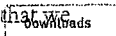
Over the past several decades, arbitrary and overly harsh supervision regimes have led people back into US jails and prisons—feeding mass incarceration. According to the Bureau of Justice Statistics (BJS), in the late 1970s, 16 percent of US state and federal prison admissions stemmed from violations of parole and some types of probation. This number climbed to a high of 36 percent in 2008, and, in 2018, the last year for which data is available, was 28 percent. A different set of data for the previous year from the Council of State Governments, which includes all types of probation violations—but is limited to state prison populations—shows that 45 percent of all US state prison admissions stemmed from probation and parole violations. These figures do not include people locked up for supervision violations in jails, for which there is little nationwide data. Black and brown people are both disproportionately subjected to supervision and incarcerated for violations.

This report documents how and why supervision winds up landing many people in jail and prison—feeding mass incarceration rather than curtailing it. The extent of the problem varies among states, and in recent years multiple jurisdictions have enacted reforms to limit incarceration for supervision violations. This report focuses on three states where our initial research indicated that—despite some reforms—the issue remains particularly acute: Georgia, Pennsylvania, and Wisconsin.

Drawing on data provided by or obtained from these states, presented here for the first time, and interviews with 164 people incarcerated for supervision violations, family members, government officials, practitioners, advocates, and experts, we document the tripwires in these states leading to incarceration. These include burdensome conditions imposed without providing resources; violations for minor slip-ups; lengthy incarceration while alleged violations are adjudicated; flawed procedures; and disproportionately harsh sentences for violations.

The report shows that, nationwide, most people locked up for supervision violations were not convicted of new offenses—rather, they were incarcerated for breaking the rules of their supervision, such as for using drugs or alcohol, failing to report address changes, or not following the rules of supervision-mandated programs. Of those who were incarcerated for new offenses, in our focus states, many were for conduct like possessing drugs; public order offenses such as disorderly conduct or resisting arrest; misdemeanor assaultive conduct; or shoplifting. The distinction between “rule” and “new offense” violations is sometimes blurry, as some jurisdictions do not track whether people incarcerated



for rule violations also had pending criminal charges, though some data  obtained and analyzed for this report did not have this issue.

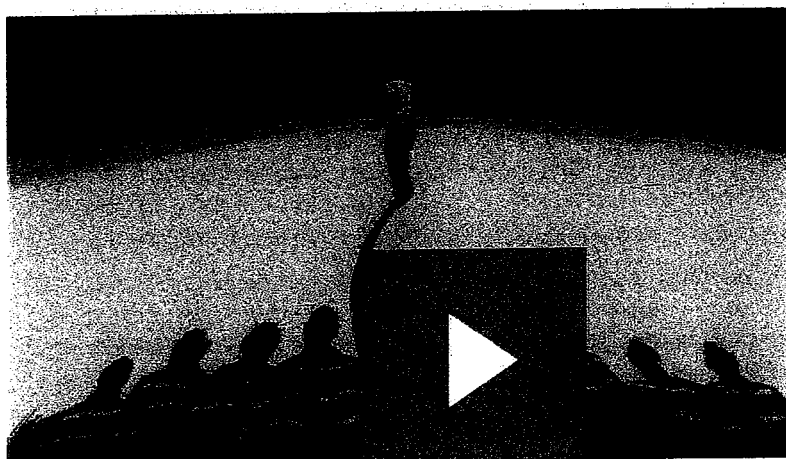
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The root causes of these violations, the report documents, are often a lack of resources and services, unmet health needs, and racial bias. The report also draws attention to marked racial disparities in who is subjected to supervision and how authorities enforce it.

In practice, supervision in many parts of the US has become a system to control and warehouse people who are struggling with an array of economic and health-related challenges, without offering meaningful solutions to those underlying problems.

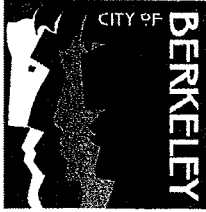
There is a better way forward. States around the country are enacting reforms to reduce the burdens of supervision, while investing in community-based services. Human Rights Watch and the ACLU urge governments to build on this momentum, and divest from arrests and incarceration for supervision violations while investing in increasing access to jobs, housing, social services, and voluntary, community-based substance use disorder treatment and mental health services—services that have a record of improving public safety and that strengthen people and their communities.



Set Up to Fail

People under supervision, lawyers, and even some judges and former supervision officers recognize that supervision often sets people up to fail. People must comply with an array of wide-ranging, sometimes vague, and hard-to-follow rules, including rules requiring them to pay steep fines and fees, attend frequent meetings, abstain from drugs and alcohol, and report any time they change housing or employment.

People must follow these rules for a long period of time. While numerous experts agree that supervision terms should last only a couple of years, many states allow probation sentences of up to five years. In states including Wisconsin, Pennsylvania, and Georgia, probation terms can be as long as the maximum



Police Review Commission

Police Review Commission 2020-2021 Work Plan

Commission mission statement

The general purpose of the Police Review Commission is to provide for community participation in setting and reviewing police department policies, practices, and procedures, and to provide a means for prompt, impartial, and fair investigation of complaints brought by individuals against the Berkeley Police Department. (B.M.C. sec. 3.32.010.)

Goal #1: Participate in the process to transform community safety in the City of Berkeley.

a. Resources

PRC staff, BPD and other City staff, and consultants.

b. Program activities

The City Council, in a reflection of the community's desires, has directed the City Manager to embark on a process of re-imagining community safety in the City, which includes limiting the role of law enforcement and identifying elements of police work that can be achieved through alternative programs, policies, systems, and community investments. As the body tasked with reviewing police policies, practices and procedures, the PRC has a valuable perspective on the current work of our police force, and expects to participate, with other community stakeholders, in envisioning and shaping a reimagined police department that sheds some responsibilities – such as mental health responses and traffic enforcement – and employs alternative approaches to remaining duties where appropriate.

c. Outputs

Recommendations for programs, structures, and initiatives to transform community safety in the City, especially as they relate to changes in the current scope of responsibilities of the Police Department.

Goal #2: Review and set BPD policies, practices, and procedures.

a. Resources

PRC staff, BPD staff, meeting space or videoconferencing capability.

b. Program activities

A policy review may be initiated by the Commission, by a City Council referral, the Police Department, or a member of the public. The initial review steps may be undertaken by the Commission, a commission subcommittee, or staff, depending on the nature and breadth of the policy, practice, or procedure in question. The review could include: holding meetings and hearings to receive input from community members; meeting with and asking questions of the BPD; studying current policies, practices, and procedures; gathering policies from other jurisdictions; and surveying the literature regarding best practices.

If a subcommittee or staff perform the initial work, it will be presented to the full Commission for review and approval.

c. Outputs

Based on the information gathered, the Commission will make a recommendation to the BPD, City Manager or City Council about a change in a policy, practice, or procedure.

d. Outcomes

The desired change is a new or improved policy, practice, or procedure. If new, it will provide guidance where it did not previously exist or was not well-documented. A revised policy, practice, or procedure will reflect a change to conform with new laws, to embrace best practices that have changed since the original policy was established, or to better align with community values.

This fiscal year, policy review must be considered in the context of the overarching effort to transform community safety.

e. Specific policies, practices, or procedures to be addressed in the current fiscal year will include ongoing, recurring, and new reviews.

Topics for which review was begun last fiscal year and will continue:

- New or revised policies and practices to address disparities in BPD pedestrian and traffic stop, citation, search, and arrest rates; and other

efforts to ensure unbiased policing. (Note that three PRC members are on the Mayor's Working Group on Fair & Impartial Policing.)

- Conversion of all BPD General Orders into Lexipol policies.
- Surveillance Acquisition Policies and Surveillance Technology Use Policies. Under the Surveillance Technology Use and Community Safety Ordinance, the PRC reviews these policies when new technologies or new uses of existing technologies are proposed, and makes a recommendation to the Council.

Matters for which review has begun or is anticipated to start this year:

- Evaluation of a proposed ordinance regulating Police Acquisition and Use of Controlled Equipment, as referred from the Council Agenda & Rules Committee.
- Uses of tear gas in narrowly defined circumstances.
- Assessment of use of body-worn cameras and re-visiting of policy recommendations made in March 2018.

Recurring topics:

- Memoranda of understanding and mutual aid pacts with other law enforcement agencies (an annual process).

Not all reviews of police policies, practices, or procedures can be anticipated in advance, as some issues are undertaken based on a request from the City Council or a civilian. Also, the PRC may undertake a review in response to particular police activity or incident.

Goal #3: Process complaints regarding individual police officer misconduct.

a. Resources

PRC staff are responsible for carrying out this goal, with critical participation by Commissioners. BPD staff are also involved.

b. Program activities

Staff will receive complaints of alleged misconduct by police officers, conduct an investigation, and, if warranted, prepare the case for a hearing before a Board of Inquiry. Rotating panels of three Commissioners serve as the BOI, except in death cases, where the Commission sits as a whole.

Cases may be closed without a hearing; the reasons for such closures include: mediation between the complainant and subject officer is completed; the complainant withdraws the complaint; or the complainant does not cooperate in the investigation.

c. Outputs

Following a BOI hearing, a Findings Report will be sent to the Chief of Police and City Manager, who may rely on the PRC's findings in determining whether to impose discipline.

Based on prior years, it is anticipated that about seven BOI hearings will be held this fiscal year.

d. Outcomes

By providing a venue for investigation of complaints that is separate from the Police Department, civilians may be more willing to file complaints, and view the process as more objective than investigations conducted by the Police Department internally. Addressing problematic behavior identified by the PRC may result in corrective action or discipline. Police officers' awareness of the PRC's complaint process may influence their behavior in a positive way.

Goal #4: Participate in training.

a. Resources

PRC staff and BPD staff

b. Program activities

Presently, Commissioners are not subject to any mandatory or prescribed course of training, other than the training that all commission chairs and vice-chairs must complete. Each Commissioner receives a 2-hour orientation from PRC staff covering topics relevant to service on the commission, the role of Commissioners and PRC staff in reviewing policy and processing complaints, and service on Boards of Inquiry. Commissioners are to meet with the Chief of Police and schedule a ride-along.

Currently, additional training on the organization of the BPD, police policies, relevant law, and officer training occurs sporadically. In light of an October 2018 Council referral asking the PRC to explore mandatory

training requirements, the Commission has asked the PRC Chair and PRC Officer to arrange for ongoing training.

c. Outputs

The results will be Commissioners who are better and more uniformly knowledgeable about police procedures, staffing and organization, training, tactics, and relevant law.

d. Outcomes

The outcome will be policy reviews and Board of Inquiry decisions that are based on a deeper understanding of police work and police-community relations such that both the police and the community will have more confidence in the work of the PRC.

Goal #5: Conduct outreach activities.

a. Resources

PRC staff

b. Program activities

The Commission, through its Outreach Subcommittee, will develop and implement activities and strategies to better inform the community about the PRC's mission and services, including its policy review function and intake of civilian complaints about officer misconduct as an agency independent of the Police Department.

c. Outputs

The results will include increased presence at community fairs and other events; speaking to community groups, churches, and the like; holding Commission meetings at various locations; updated literature describing the Commission's work; a revamped website.

d. Outcomes

The outcome will be larger numbers of community members who are aware of the PRC and informed about its services and activities.

Tasks ranked by Commissioners December 2018

Status as of Sept. 3, 2020

Green = active; yellow = waiting; gray = done; orange = not started

RANK	TASK	STATUS	NOTES
1	Council referral: extend 120-day disciplinary time limit	Awaiting M&C outcome.	Done. Longer time limit in Charter amendment.
2	Body-Worn Camera Policy	Awaiting response to recommendations sent to Chief March 29.	Conveyed to Council its recomm on viewing video before report-writing during Surv. Ord. review.
3	Fair & Impartial Policing/CPE recommendations from Council	Mayor convened F&I Policing Workgroup Nov. 2019; expected to complete work Oct. 2020.	Comm. Ramsey chairs Workgroup. Comms. Calavita, Mizell are members.
4	G.O. U-2, Use of Force - policy revision (Subcomm.)	In progress. UOF Subcommittee reviewing draft policy received from BPD Jan. 2, 2020.	So Done. Council adopted Policy 300 based on PRC recommendation July 23, 2020.
5	Responsiveness of BPD management to PRC requests (Combined with #11)	Awaiting response to March 4, 2019 inquiry to City Atty: what docs is PRC entitled to obtain from BPD?	
6	Council referral: explore mandatory Commissioner training	In progress - referral response to Council from Chair & PRC Officer.	Ongoing training to be brought to PRC periodically.
7	Lexipol Policies -- Conversion from General Orders (Subcomm.)	In progress.	
9	Process for considering informal complaints	Done. Commission adopted regulation Jan. 8, 2020.	
11	After-Action report requirements and whether release/withholding complies with PRA	(See #5.)	
14	MOUs/Mutual Aid (Subcomm.)	Done. Commission approved new/revised policies Feb. 26, 2020	
15	Policies re surreptitious recording of police-civilian interactions	Awaiting BPD response to Dec. 20, 2019 letter.	
18	Outreach - publicize existence of PRC and its services to community	Subcommittee formed June 10, 2020.	
20	BPD's policy for shelter-in-place directive to schools	To be scheduled.	
21	Media Credentialing	To be scheduled.	Lesipol Subcomm to consider?
22	Review of DUI checkpoints	To be scheduled.	

Tasks ranked by Commissioners December 2018

Status as of Sept. 3, 2020

Green = active; yellow = waiting; gray = done; orange = not started

New Tasks Added 2020

	Process for commendations of BPD officers and employees.		Done. Guidelines added to PRC Standing Rules Jan. 22, 2020
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New Tasks Added 2019

	Emergency Mental Health response	Presentation by Berkeley M.H. Div & BPD re their response given April 24.	Part of transforming community safety process.
	Charter reform	Feb. 27, 2019 PRC approved writing letter to Mayor/Council. Was not done, but now moot as proposal will soon go to Council.	Done. Council placed Charter amendment on Nov. 2020 ballot.
	Standard of Proof (Subcomm.)	In progress - established Apr. 10; on hold.	Done. Change incorporated into Charter amendment..
	Probation and Parole Question (Subcomm.)	Subcomm. recommendations to PRC passed Dec. 11, 2019 and Feb. 5, 2020.	Awaiting BPD response.

Other pending items in 2018

	Right to Watch (G.O. W-1)	Proposed policy to Chief 11.2.17.	
	June 20, 2017 (Review of BPD Response at Council meeting)	Draft to BPD 1.31.18. Per Chief 7.25.18, no response until litigation concluded.	Litigation concluded July 2, 2019; PRC Officer reminded Chief of request Aug. 8, 2019.
	BPD Accountability Plan for Training/Professional Development	Ltr to City Mgr 2.21.18.	
	Review BPD budget	Request for Financial and Performance Audit of BPD; sent to Council 3.8.18	(Related: PRC received BPD budget presentation June 12, 2019.)



POLICY COMPLAINT FORM

Police Review Commission (PRC)

1947 Center Street, 1st Floor, Berkeley, CA 94704

Website: www.ci.berkeley.ca.us/prc/ E-mail: prc@ci.berkeley.ca.us

Phone: (510) 981-4950 TDD: (510) 981-6903 Fax: (510) 981-4955

Date Received:

7-27-20

PRC CASE #

2475

**** Please type your responses directly into this form. Do not copy and paste text into this form because some text may be lost when sent. ****

1

Name of Complainant: Nicholas Eugene Wilkins & Satellite Affordable Housing Ass
Last First Middle

Mailing Address: 1228e Ashby avenue
Street City State Zip

Primary Phone: (51) Alt Phone: ()

E-mail address: wilkensnick9@gmail.com

Occupation: retail clerk- disabled Gender: male Age: 38

Ethnicity: Asian Black/African-American Caucasian
 Latino/Hispanic Multiethnic: Other:

2

Identify the Berkeley Police Department (BPD) policy or practice you consider to be improper or would like the Commission to review.
transients & convicts camping or, hiding, peddling, soliciting, shoplifting, trespassing, selling & manufacturing drugs and alcohol, violence, sex trafficking, pimping, burning fires, dumping, collecting & storage of items or waste, man made weapon' s that will assault others with causing severe injury to body.

3

Location of Incident (if applicable) between shellmount street and bay street on the corn

Date & Time of Incident (if applicable) 05/15/20, 07/05/20 or sometime

Provide a factual description of the incident that forms the basis of your complaint. Be specific and include what transpired, and how the incident ended.

storage of drugs and alcohol, attempted selling of drugs to tenants of private properties. storage of stolen items from tenants person and personal property. thief succeeded the home invasion' s and peddling person took many item' s from inside with no permissions. the flat empty terrain serves as a multi- storage of tent' s or large boxes also. loot is captured and stored inside several hidden multi- areas. Outdoor sexual activities. their known terrorism from this situation to another area, other persons, in city of berkeley included and long- lasting.

4 What changes to BPD policy, practice, or procedure do you propose?

Clear meets and bound of persons, things, and actual COVID19 persons of interest in large areas between shellmount street and bay street. stop the threats and violence.

5 Use this space for any additional information you wish to provide about your complaint. (Or, attach relevant documentation you believe will be useful to the Commission in evaluating your complaint.)

group of men women and some young adults. all have dwelled in berkeleys city street. known invasions of home with utilities used by many without prime permission to those at any given time.

6 CERTIFICATION

By typing my initials below, I hereby certify that, to the best of my knowledge, the statements made on this complaint are true. I also understand that my oral testimony before a Board of Inquiry will be given under oath (in closed session).

n.w.
Initials

07/24/2020
Date

7 How did you hear about Berkeley's Police Review Commission?

- Internet
Publication: yielding illegal acts and proposec
Referral: alameda county' s sheriff departme
Other: Berkeley' s police department

**ANNOTATED AGENDA
SPECIAL MEETING OF THE
BERKELEY CITY COUNCIL**

Thursday, July 23, 2020

6:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – CHERYL DAVILA
DISTRICT 3 – BEN BARTLETT
DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – RIGEL ROBINSON
DISTRICT 8 – LORI DROSTE

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

Live audio is available on KPFB Radio 89.3. Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33) and via internet accessible video stream at <http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx>.

To access the meeting remotely: Join from a PC, Mac, iPad, iPhone, or Android device: Please use this URL <https://us02web.zoom.us/j/81015840931>. If you do not wish for your name to appear on the screen, then use the drop down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon by rolling over the bottom of the screen.

*To join by phone: Dial 1-669-900-9128 and enter Meeting ID: 810 1584 0931. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.*

To submit an e-mail comment during the meeting to be read aloud during public comment, email clerk@cityofberkeley.info with the Subject Line in this format: "PUBLIC COMMENT ITEM ##." Please observe a 150 word limit. Time limits on public comments will apply. Written comments will be entered into the public record.

Please be mindful that the teleconference will be recorded as any Council meeting is recorded, and all other rules of procedure and decorum will apply for Council meetings conducted by teleconference or videoconference.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900. The City Council may take action related to any subject listed on the Agenda. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call: 7:30 p.m.

Present: Kesarwani, Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: None.

Action Calendar – Old Business

- 1. Animal Services Contract with the City of Piedmont** (*Continued from July 14, 2020*)
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract, with any amendments, with the City of Piedmont for animal care services for FY2021-FY2025, which increases the existing contract by up to \$180,134, with a total contract amount not to exceed \$441,984.
Financial Implications: See report
Contact: Erin Steffen, City Manager's Office, (510) 981-7000
Action: 0 speakers. M/S/C (Arreguin/Robinson) to adopt Resolution No. 69,506--N.S.
Vote: Ayes – Kesarwani, Bartlett, Hahn, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila, Harrison; Absent – Wengraf.

Action Calendar – Public Hearings

- 2. ***Removed from Agenda – Scheduled for a special meeting on July 23, 2020 at 4:30 p.m.*** ZAB Appeal: 1533 Beverly Place, Administrative Use Permit #ZP2018-0153** (*Continued from July 14, 2020*)
From: City Manager
Contact: Jordan Klein, Planning and Development, (510) 981-7400

Action Calendar

3. Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force

From: Police Review Commission

Recommendation: Approve a revised Use of Force policy for the Berkeley Police Department as recommended by the Police Review Commission.

Financial Implications: See report

Contact: Katherine Lee, Commission Secretary, (510) 981-4950

Action: M/S/C (Arreguin/Hahn) to accept revised materials from Councilmember Harrison for Item 3.

Vote: All Ayes.

Recess 10:17 p.m. – 10:28 p.m.

Action: M/S/C (Arreguin/Droste) to suspend the rules and extend the meeting to 11:30 p.m.

Vote: All Ayes.

Action: M/S/C (Arreguin/Hahn) to suspend the rules and extend the meeting to 12:00 a.m.

Vote: All Ayes.

Action: M/S/C (Arreguin/Harrison) to suspend the rules and extend the meeting to 12:30 a.m.

Vote: All Ayes.

Action: M/S/Failed (Hahn/Arreguin) to suspend the rules and extend the meeting to 12:45 a.m.

Vote: Ayes – Davila, Harrison, Hahn, Robinson, Arreguin; Noes – Bartlett, Droste; Abstain – Kesarwani, Wengraf.

Action: M/S/Carried (Hahn/Arreguin) to suspend the rules and extend the meeting to 12:45 a.m.

Vote: Ayes – Davila, Bartlett, Harrison, Hahn, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Wengraf, Droste.

Action: M/S/C (Harrison/Arreguin) to call for the previous question on Item 3.

Vote: All Ayes.

Action: 56 speakers. M/S/C (Harrison/Davila) to approve the revised use of force as proposed in Councilmember Harrison's item accepted at the meeting with the following amendments.

- Section 300.1.3 – amended to read:
C. MINIMIZING THE USE OF DEADLY FORCE. Deadly force may only be used when it is objectively reasonable that such action is immediately necessary to protect the officer or another person from imminent danger or death or serious bodily harm. Officers shall not use deadly force if it is objectively reasonable that alternative techniques will eliminate the imminent

Action Calendar

danger and ultimately achieve the law enforcement purpose with less risk of harm to the officer or to other persons

- Section 300.4 – amended to read:
An officer's use of deadly force is justified only when it is objectively reasonable based on the totality of the circumstances, that such force is objectively necessary to, 1) defend against an imminent threat of death or serious bodily injury to the officer or another or 2) apprehend a suspected fleeing person for any felony that threatened or resulted in death or serious bodily injury, provided it is objectively reasonable that the person will cause imminent death or serious bodily injury to another unless immediately apprehended.

Where feasible, the officer shall, prior to the use of deadly force, make reasonable efforts to identify themselves as a peace officer and to warn that deadly force may be used, unless it is objectively reasonable that the person is aware of those facts.

An officer shall not use deadly force against another person unless it is objectively reasonable that using deadly force would not unnecessarily endanger innocent people.

Lethal force is prohibited when its sole purpose is to effect an arrest, overcome resistance or prevent a subject from escaping when the subject does not present an immediate danger of death or serious bodily injury. Lethal force is also prohibited solely to prevent property damage or prevent the destruction of evidence.

An "imminent" threat of death or serious bodily injury exists when, based on the totality of the circumstances, it is objectively reasonable to believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. An officer's subjective fear of future harm alone is insufficient as an imminent threat. An imminent threat is one that from appearances is reasonably believed to require instant attention.

- Section 300.6 is amended to read as follows:
All uses of force shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident and the level of force used. The officer should articulate the factors perceived and why they believed the use of force was objectively reasonable and objectively necessary under the circumstances. Whenever an officer or employee uses Oleoresin Capsicum (pepper spray) they must also complete a "Use of Pepper Spray Report." Whenever an officer or employee use body wrap or spit hood restraint devices they must also complete a "Use of Restraint Device Report" and document, review and report such uses in accordance with section 300.11.

Upon receiving notification of a use of force, an uninvolved supervisor, when feasible, shall determine the level of force reporting level, investigation,

Action Calendar

documentation and review requirements.

- The adopted Use of Force Policy 300 will be effective October 1, 2020.
- The adopted policy does not make any changes to the previously adopted ban on tear gas.
- The Council refers to the City Manager a request for an analysis by the City Attorney of the recent court decision in Oakland regarding the use of tear gas and mutual aid.
- The Council refers to the Police Review Commission and the Public Safety Committee the issue of providing an allowance for the Special Response Team to use tear gas in certain circumstances.

Vote: Ayes – Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Droste.

4. **Changes to the Berkeley Municipal Code and City of Berkeley Policies with Respect to Local Emergency Declarations and First Amendment Curfews** (Continued from June 9, 2020)

From: Councilmember Hahn (Author), Councilmember Bartlett (Co-Sponsor), Councilmember Harrison (Co-Sponsor), Mayor Arreguin (Co-Sponsor)

Recommendation:

1. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify the following with respect to the declaration of a Local Emergency:
 - a. A Local Emergency can only be declared by the Director of Emergency Services if a regular or special meeting and session of the City Council cannot be called due to physical impossibility of holding a meeting, because a quorum cannot be established, or because the urgency of the Local Emergency is such that waiting 24 hours for the City Council to convene a session and/or Special Meeting would endanger the community;
 - b. Should the Director declare a Local Emergency without action of the City Council (due to one of the reasons stated at (a), above), Council ratification of such action occurs at the first possible opportunity, even if it requires calling a Special Meeting and/or session of the Council; and
 - c. The applicable statutory and legal standards (Federal, State and Local) for calling a Local Emergency shall be presented to the City Council when seeking declaration or ratification of a Local Emergency, along with facts to support meeting those standards, so that the City Council, likely acting under rushed and exigent circumstances, is able to make a carefully considered and fact-based determination that declaration of such Local Emergency conforms with the legal standards and is supported by facts.
2. Direct the City Manager to return to the City Council for adoption amendments to the Berkeley Municipal Code and/or policies to approve that clarify and codify policies, terms and procedures for the order, scope, terms, duration, and all other elements and conditions of curfews called in response to, or likely to have the effect of limiting or banning, planned, expected or reasonably foreseeable first amendment activity, including rallies, marches, demonstrations and assemblies of all kinds ("First Amendment Curfews"), as enumerated (1-8) under the "Background" section of this item, below.

Action Calendar

3. Advise the City Manager and/or Director of Emergency Services that approval of this item represents the will and direction of the City Council with respect to declarations of Local Emergencies and imposition of First Amendment Curfews, and should the occasion to declare a Local Emergency or impose a First Amendment curfew arise prior to formal Council adoption of the requested amendments and policies, the City Manager and/or Director of Emergency Services shall, to the greatest extent possible under existing law, strive to encompass actionable elements, and meet spirit, of this item.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

Action: M/S/C (Arreguin/Hahn) to continue Item 4 to July 28, 2020.

Vote: All Ayes.

Adjournment

Adjourned at 12:45 a.m.

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #3: Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force

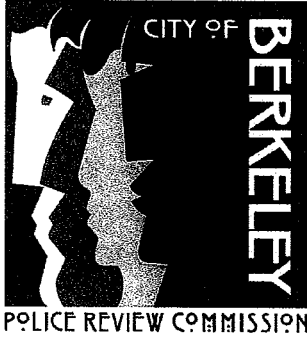
1. Revised material, submitted by Councilmember Harrison
2. Revised material, submitted by the City Manager
3. Supplemental material, submitted by the Police Department
4. City of Oakland Community Police Review Agency
5. BART, Office of the Independent Police Auditor
6. James Chanin
7. Moni Law (2)

Supplemental Communications and Reports 3

Item #3: Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force

8. Revised material, submitted by Councilmember Harrison
9. Juli Dickey
10. Janice Schroeder (2)
11. Diana Bohn
12. Lisa Teague
13. Erica Etelson
14. Max Ventura (2)

15. Elizabeth Ferguson
16. Sanah Basrai
17. Marjorie Fletcher
18. Lindsey Yamane
19. Wynd Kaufmyn
20. Mariah Castle
21. Judith Grether
22. Kate Geronemus
23. David Seegal
24. Moni Law
25. Smeeta Mahanti
26. Christine Garibian
27. Marcy Rein
28. George Perezvelez
29. Martha-Lou Wolff
30. Julie Leftwich
31. Ivar Diehl and Siobhan Lettow
32. Michael Chang
33. John Lopez
34. Julia Sen
35. Amy Garlin
36. MJ Baumann
37. Councilmember Harrison
38. Michael McBride
39. Thomas Lord
40. Karen Pita Loor



**Proposed Policy 300 – Use of Force
for Berkeley Police Department**
Presentation to the City Council • July 23, 2020

Presenters

- Kitty Calavita, Chairperson, Police Review Commission (PRC)
- Commissioner George Perezvelez, Chairperson, PRC Use of Force Policy Subcommittee
- Commissioner Izzy Ramsey, Member, PRC Use of Force Policy Subcommittee
- Katherine Lee, PRC Officer and Secretary to the PRC

City Council's Oct. 31, 2017 directives regarding a use of force policy

- a. *Enhance BPD's use of force policy statement.*
- b. *Create a definition of use of force.*
- c. *Require that all uses of force be reported.*
- d. *Categorize uses of force into levels for the purposes of facilitating the appropriate reporting, investigation, documentation and review requirements.*
- e. *Require Use of Force Reports to be captured in a manner that allows for analysis.*
- f. *Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission and Council.*

"8 Can't Wait"

In General Order U-2

- Chokeholds and strangleholds banned
- Verbal warning required before shooting
- Duty to intervene when seeing another officer use excessive force
- UOF Continuum (but not in BPD's Policy 300)

Added and/or Enhanced in proposed Policy 300

- Attempts at de-escalation of all situations
- Exhaustion of alternatives before using lethal force
- Ban on shooting at moving vehicles absent imminent threat
- Requiring reporting of all uses of force

Enhanced use of force policy statement and definitions

- Sanctity of life (Sec. 300.1) – PRC enhanced BPD’s statement and moved to first section of policy, to stress importance.
- Use of force standard (Sec. 300.1.2) – (discussed in more detail later)
- Core principles (Sec. 300.1.3) – BPD already embraces many of these principles. This serves as a public declaration of the philosophical foundation of the use of force policy.
- Definitions (Sec. 300.1.4) – Force, non-lethal force, less-than-lethal force, and deadly force are defined.

Minimal use of force and minimal reliance standard

- Established in the use of force standard (Section 300.1.2) and repeated elsewhere in policy.
- Requiring officers to use the minimum amount of force that is objectively reasonable, objectively necessary, and proportional is a more strict standard than the minimum standard set forth by the U.S. Supreme Court in *Graham v. Connor*.

Objectively reasonable, objectively necessary, and proportional

- Found in the use of force standard and throughout the policy.
- Together with the minimal use of force, establishes a more stringent standard for the application of force.
- Reflects values of the Berkeley community without increasing potential liability of the City.

Use of Deadly Force (Section 300.4)

- Limits allowable use of deadly force to situations whether death or serious bodily injury is imminent, thus reflecting emphasis on the sanctity of life.
- Defines serious bodily injury more narrowly than in the state Penal Code.
- Exceeds requirements of AB 392, setting new standard for use of deadly force in California effective Jan. 1, 2020.
- Does *not* include requirement to exhaust all reasonable alternatives. The narrowly defined allowable use of deadly force should be sufficient to protect the public.

Use of Force Continuum (Section 300.3.4)

- Concept: there are reasonable and proportional responses to various types of threats officers face.
- Force used need not be sequential, if lower levels are not appropriate.
- Added as requested by Council.
- Is one of the “8 Can’t Wait” policy reforms.

Reporting Levels (Section 300.6.2)

- BPD’s draft policy expanded on the types of force that are reportable; PRC’s draft expands further.
- PRC draft defines four levels of force. These facilitate the appropriate reporting, documentation, investigation, and review of uses of force.
- Added as requested by Council.
- Comprehensive reporting is one of the “8 Can’t Wait” policy reforms.

**SUPPLEMENTAL
COMMUNICATIONS AND
REPORTS 2**

**BERKELEY CITY COUNCIL
SPECIAL MEETING**

DATE OF MEETING: TUESDAY, JULY 23, 2020

TIME: 6:00 P.M.

The agenda packet for this meeting was distributed/posted on July 17, 2020. Communications in this supplement were received after 5pm on July 17, 2020. This communication packet was distributed/posted on July 22, 2020.

Action Calendar

Item #3: Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force

1. Revised material, submitted by Councilmember Harrison
2. Revised material, submitted by the City Manager
3. Supplemental material, submitted by the Police Department
4. City of Oakland Community Police Review Agency
5. BART, Office of the Independent Police Auditor
6. James Chanin
7. Moni Law (2)

SUPPLEMENTAL COMMUNICATIONS AND REPORTS 3

BERKELEY CITY COUNCIL SPECIAL MEETING

DATE OF MEETING: TUESDAY, JULY 23, 2020

TIME: 6:00 P.M.

The agenda packet for this meeting was distributed/posted on July 17, 2020. Communications in this supplement were received after 12pm on July 22, 2020. This communication packet was distributed/posted on July 27, 2020.

Action Calendar

Item #3: Referral Response: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force

8. Revised material, submitted by Councilmember Harrison
9. Juli Dickey
10. Janice Schroeder (2)
11. Diana Bohn
12. Lisa Teague
13. Erica Etelson
14. Max Ventura (2)
15. Elizabeth Ferguson
16. Sanah Basrai
17. Marjorie Fletcher
18. Lindsey Yamane
19. Wynd Kaufmyn
20. Mariah Castle
21. Judith Grether
22. Kate Geronemus
23. David Seegal
24. Moni Law
25. Smeeta Mahanti
26. Christine Garibian
27. Marcy Rein
28. George Perezvelez
29. Martha-Lou Wolff

RESOLUTION NO. 69,531 N.S.

ADOPT A RESOLUTION IMPLEMENTING CORE POLICE ACCOUNTABILITY BOARD AND DIRECTOR OF POLICE ACCOUNTABILITY FUNCTIONS BY JULY 1, 2021

WHEREAS, on April 14, 2020 the Council unanimously adopted Resolution 69,363-N.S. submitting Police Accountability Board and Director of Police Accountability Charter Amendment initiative to the November 2020 ballot; and

WHEREAS, the purpose of the Police Accountability Board is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department; and

WHEREAS, the purpose of the Director of Police Accountability is to investigate complaints filed against sworn employees of the Berkeley Police Department, to reach an independent finding as to the facts and recommend corrective action where warranted, and the Director of Police Accountability may also serve as the Secretary to the Police Accountability Board to assist the Board in carrying out their duties; and

WHEREAS, Section 27 of the Charter Amendment states that the Police Review Commission established by Ordinance No. 4,644-N.S., as amended, shall continue in existence until its functions are transferred to the Police Accountability Board, but no later than January 3, 2022; and

WHEREAS, it is in the public interest to establish the Police Accountability Board and Director of Police Accountability as soon as possible to facilitate modern police accountability functions, especially in light of ongoing efforts to transform public safety; and

WHEREAS, the City is positioned to establish the functions and policy changes of the Police Accountability Board and appoint an interim Director no later than July 1, 2021.

NOW THEREFORE BE IT RESOLVED that the City Council, contingent upon voter approval of the Charter Amendment contained in Resolution No. 69,363-N.S., establishes the following core Police Accountability Board and Director of Police Accountability functions and policy changes for implementation by July 1, 2021:


- a. Establish and convene the Police Accountability Board with all investigatory, policy and other authorities, and;
- b. To assist in an orderly transition between the Police Review Commission and the Police Accountability Board established by this Article, Police Review Commission staff shall serve as interim Police Accountability Board staff until the City hires a Director of Police Accountability.

The foregoing Resolution was adopted by the Berkeley City Council on July 28, 2020 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

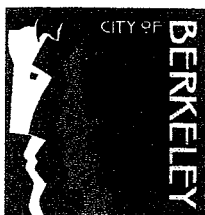
Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk



Police Review Commission (PRC)

July 27, 2020

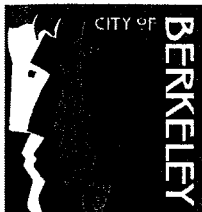
To: Honorable Mayor and Members of the City Council
From: Kitty Calavita, Chairperson, Police Review Commission
Re: Implementing Core Police Accountability Board and Director of Police
Accountability functions by July 1, 2021 (Consent Calendar Item #32 on
the City Council's July 28, 2020 agenda.)

This concerns the resolution on the agenda for your July 28, 2020 meeting, to implement the core functions of the Police Accountability Board and Director of Police Accountability no later than July 1, 2021, contingent on voter approval this November of the Charter Amendment establishing the new body and staff position.

The Police Review Commission reviewed the proposed resolution at its July 22, 2020 meeting, and voted to communicate to you its wholehearted support, seeing no reason to delay implementation of the significant new structure, authority, and processes for conducting civilian oversight of the Berkeley police, should the Charter Amendment pass.

The Police Review Commission's vote was as follows: Moved/Seconded (Mizell/Perezvelez) – Ayes: Calavita, Chang, Leftwich, Mikiten, Mizell, Perezvelez, and Ramsey; Noes: None; Abstain: Allamby; Absent: None. (Please note Comm. Allamby was present but unable to vote on this item due to a technical issue with the videoconference.)

cc: Dee Williams-Ridley, City Manager
David White, Deputy City Manager
PRC Commissioners



Office of the City Manager

July 23, 2020

To: Honorable Mayor and Members of the City Council
The Police Review Commission

From: *Dee* Dee Williams-Ridley, City Manager

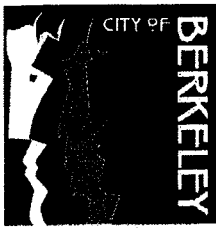
Subject: **USE OF PEPPER SPRAY INCIDENT**

Attached please find the Use of Pepper Spray report that occurred on May 29, 2020. Please note that this and the previous incident took place on the same day, but by different officers (see my memo to you dated July 9, 2020, attached).

The authorization for these reports comes from the City of Berkeley Council action taken September 16, 1997, directing that any use of "Oleoresin Capsicum" OC spray be reported to the City Council and the Police Review Commission via the Police Department's Chain of Command as a public record within seven (7) days of its use.

Attachment: Use of Pepper Spray Report 20-26023

cc: Paul Buddenhagen, Deputy City Manager
David White, Deputy City Manager
Andrew Greenwood, Chief of Police
Mark Numainville, City Clerk
Jenny Wong, City Auditor
Matthai Chakko, Assistant to the City Manager / Public Information Officer



Berkeley Police Department

July 20, 2020

To: Dee Williams-Ridley, City Manager
From: Andrew R. ^{Greenwood} Greenwood, Chief of Police
Subject: **USE OF PEPPER SPRAY INCIDENT**

Attached please find the Use of Pepper Spray report that occurred on May 29, 2020. The authorization for these reports comes from the City of Berkeley Council action taken September 16, 1997, directing that any use of "Oleoresin Capsicum" OC spray be reported to City Council and the Police Review Commission via the Police Department's Chain of Command as a public record within seven (7) days of its use.

Attachment: Use of Pepper Spray Report Case 20-26023



BERKELEY POLICE DEPARTMENT
USE OF PEPPER SPRAY REPORT



(Note – this is a public document)

This report is to be completed by any Department employee who use "Oleoresin Capsicum" OC spray during the performance of his or her duties. The authorization for this report comes from City of Berkeley Council action taken September 16, 1997, directing that any use of "OC" be reported to the City council and the Police Review Commission via the Police Department's Chain of Command as a public record within seven (7) days of its use.

Date: June 15, 2020
Date of Pepper Spray Report

From: Ofc. Kevin Kleppe
Note: This form is to be completed by the Department employee using the spray. If that person is unable to complete this form due to injury, it shall be completed by his or her immediate supervisor.

Case Number(s): 2020-00026023

Incident Date: May 29, 2020

Incident Time: Approximately 2100-2230 hours

Incident Location: 8th St / Broadway in Oakland, CA

Application was: Effective Ineffective

Subject: Adult Juvenile

Subject description: M Unk. Unk
Sex Height Weight

First Aid for Subject: Paramedic responded and administered First Aid Yes No

Additional comments on First Aid rendered: Subject fled after being exposed and BPD was therefore unable to render aid or take the subject into custody for felony assault on a peace officer PC 245(c).

Nature of Incident:

On 5/29/20 BPD officers were sent in a mutual aid capacity to assist OPD and Alameda County agencies for a planned demonstration in the area of 7th St / Broadway. Mutual aid was requested as there was a potential for the demonstration to become violent, and acts of violence/property damage could occur. During that time I was assigned as a Team Leader for

SRT's Gold Team and we were on a skirmish line (starting at 7th /Broadway and eventually moving to approximately 11th / Broadway) with Alameda County Sheriff's deputies. During this demonstration members of the crowd began throwing glass bottles, bricks, rocks, chunks of concrete, explosives, fireworks, and Molotov Cocktails at the officers on the skirmish line (both BPD and ACSO). These felony assaults resulted in several injuries of BPD and ACSO personnel to include bruises and burns.

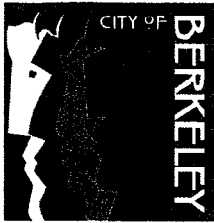
Summary and justification of the Actions of Officer(s) Involved:

During the night of 5/29/20 I observed an individual subject (unkown age, race, heigh or weight) at the intersection of 8th St and Broadway who was hiding behind a building and repeatedly throwing large chunks of concrete and rocks into the skirmish line of BPD and ACSO officers (in violation of PC 245). I deployed a canister of CTS OC Vapor at the corner of the building where the suspect was darting out from. This canister landed, the OC Vapor deployed and the subject stopped his continued felony assaults on officers on the line. This occurred at an unknown exact time.

Also, during these violent assaults I saw a group of people who were throwing large chunks of concrete and rocks into the skirmish line of BPD and ACSO officers. I deployed a second canister of CTS OC Vapor at the feet of this group. The OC Vapor deployed and the group scattered, running away from BPD officers, but stopping their felony assault of officers.

Please print and route through Chain of Command to the Office of the Chief.

<u> </u>	Duty Supervisor
<u>M. D. L-3</u>	Watch Commander
<u>DNR</u>	Operations Captain
<u>G. C.</u>	Chief of Police



City Clerk Department

August 19, 2020

To: Commission Secretaries
From: ~~W~~ Mark Numainville, City Clerk
Subject: Berkeley Independent Redistricting Commission

The City of Berkeley is looking for dedicated residents to help shape the city's future. Thirteen people will be selected from the pool of applicants to serve on an Independent Redistricting Commission (IRC) in 2021-2022. Our goal is to reach all of Berkeley's diverse residents to ensure diverse representation on the commission – a task that has become more challenging during the COVID-19 pandemic.

To help spread the word, we're asking you to share this information with your commission. You may e-mail this memo and the attached documents directly to the commissioners and also remember to place it in your next agenda packet.

City Commissioners may serve on the IRC provided that they resign from all other city commissions if selected. In addition, they will be barred from serving on any city commissions for two years after the termination of their service on the IRC.

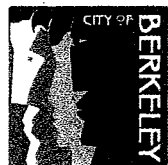
Full information, including the application form, is available on the redistricting web page - <https://www.cityofberkeley.info/redistricting/>.

The City Clerk Department team is available for any questions! Contact us at (510) 981-6908 or redistricting@cityofberkeley.info.

CITY OF BERKELEY

INDEPENDENT REDISTRICTING COMMISSION PLAN

REVISED June 2020 ~ Prepared by the City Clerk Department



INDEPENDENT
REDISTRICTING
COMMISSION

BERKELEY

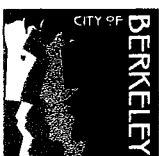
This material is available in alternative formats upon request. Alternative formats include audio-format, braille, large print, electronic text, etc. Please contact the Disability Services Specialist and allow 7-10 days for production of the material in an alternative format.

Disability Services Specialist

Email: ada@cityofberkeley.info

Phone: 1-510-981-6418

TTY: 1-510-981-6347



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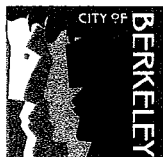
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INTRODUCTION

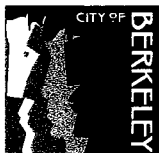
Like many cities throughout the Bay Area and California, Berkeley utilizes a district-based system of electing councilmembers and has done so since 1986. The city is divided into eight geographic areas called “districts.” One councilmember is elected from each district by the voters living in that district. Other elected officers (such as Mayor and Auditor) are elected at-large, meaning they can live anywhere in Berkeley and are elected by all of Berkeley’s voters.

On November 8, 2016, Berkeley voters approved Measure W1, amending the City’s Charter to transfer responsibility for drawing electoral boundaries from the City Council to an Independent Redistricting Commission (the “Commission”). The measure was intended to establish a redistricting process that is open to the public, meets the requirements of law, and is conducted with integrity, fairness, and without personal or political considerations.

The Commission is tasked with adjusting the boundaries of City Council districts every ten years following the decennial federal census. Composed of thirteen members with broad community representation, the Commission will act as an independent body to engage the public and adopt an updated map of City Council district boundaries. The community will provide verbal and written input on the redistricting process, including submitting their own maps. The Charter also provides impasse procedures if a final map cannot be agreed upon.

The City Clerk Department will support the Commission throughout the redistricting process, including public outreach, coordinating the application process, and facilitating public meetings. The Commission will also receive technical support from an independent demographer, the City Attorney’s Office, and the Department of Information Technology. This document provides a high-level overview of the City’s Independent Redistricting Commission Plan. If you have questions about the redistricting process or this document, you may call the City Clerk Department at (510) 981-6900 or email redistricting@cityofberkeley.info.

Due to the COVID-19 pandemic, certain outreach activities may be limited. City staff will focus on methods to reach the widest possible audience given the mass gathering and physical distancing requirements. Electronic methods will be employed to maximize the public’s ability to participate in the process if in-person meetings are not feasible.



KEY DATES AND MILESTONES

Below is a timeline for the Independent Redistricting Commission highlighting key dates and milestones for the Commission and the public.

July – September 2020

Public education and application outreach period

September 8 – October 9, 2020

30-day commissioner application submission period

October – December 2020

Applications screened for eligibility

January 2021

Selection of eight district commissioners and alternates

January 2021

Commission convenes and selects five at-large commissioners and alternates

February 2021

Commission meets to establish its meeting schedule, meeting locations, and to receive training on conflict of interest, transparency, and ethics laws; and federal, state, and local redistricting laws and regulations

March 2021 (All subsequent timeline dates will change if the release of data is delayed)

Population data released by U.S. Census Bureau

April 2021

Redistricting information and tools available to the public

June 2021

Deadline for the public's redistricting plan submissions

June – July 2021

Staff analysis of public redistricting plan submissions

July – October 2021

Commission consideration of public redistricting plans and plans originating from the Commission

February 1, 2022

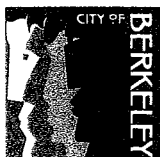
Deadline for Commission to adopt a redistricting plan

February – March 2022

City Council adopts Commission's redistricting plan (unless impasse reached)

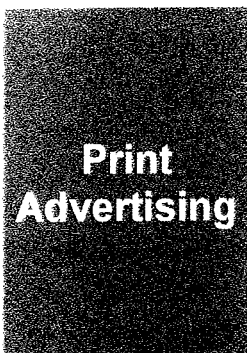
November 8, 2022

First election with new districts (unless impasse reached or plan referended)



OUTREACH

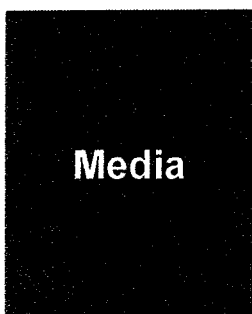
Key components of the City's outreach plan consist of the following.



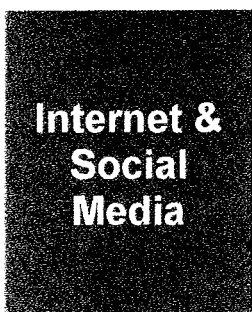
- ▶ Advertisement in the City's Recreation Activity Guide
- ▶ Tri-fold brochure and posters at the City's senior and recreation centers, administrative offices, public meetings, and public libraries; coordinated with U.C. Berkeley student union; and sent to community agencies
- ▶ Print advertisements in the Berkeley Times, Daily Cal, and Berkeley Tri-City Post newspapers



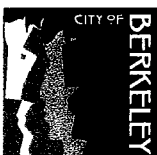
- ▶ If permitted under the mass gathering and physical distancing policies, City staff will attend a variety of community events across the City
- ▶ Hold additional Town Hall community meetings upon request (in-person or via videoconference as conditions permit)
- ▶ Send information through existing communication outlets (Council newsletters; neighborhood groups, etc.) for dissemination



- ▶ Public notices broadcast on Berkeley Community Media
- ▶ Press releases with targeted outreach to local print, online, radio, and multilingual media sources
- ▶ Coordinating with the Health, Housing, and Community Services Department to reach additional community partners



- ▶ Dedicated page on City's website and front-page advertising
- ▶ Posts on the City's social media accounts, including Twitter and boosted advertisements on Facebook
- ▶ Paid advertisements posted on Berkeleyside



DEPARTMENT RESPONSIBILITIES

City Clerk Department

The Independent Redistricting Commission plan is an interdepartmental effort coordinated by the City Clerk Department. Preliminary responsibilities include establishing timelines, procedures, and the redistricting plan; coordinating a Request for Proposal for demographer services; and coordinating with the Department of Information Technology to procure electronic districting software for use by the Commission and public.

Throughout the redistricting process, the City Clerk Department will serve as the Secretary to the Commission and be responsible for conducting outreach, evaluating applications, selecting the initial eight commissioners, facilitating public meetings, coordinating all interdepartmental staff efforts, and supporting the Commission.

When a final district map is approved by the Commission and the City Council, the City Clerk Department will work with the Alameda County Registrar of Voters to implement the map. If an impasse is reached, the City Clerk Department will coordinate the effort through the election process and, if necessary, the identification of a special master to develop the redistricting plan.

City Attorney's Office

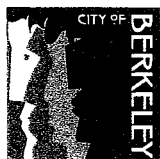
The City Attorney's Office serves as a legal resource to the Independent Redistricting Commission during training on conflict of interest, open meeting, and ethics laws, will attend Commission meetings to answer legal questions, and provide ongoing legal analysis as required.

Department of Information Technology

The Department of Information Technology will provide technical support for installation of the electronic districting software system and ongoing support throughout the districting process as needed. The GIS Division will provide technical support with mapping and demographics, including initial review of the census data provided by the U.S. Census Bureau.

City Manager's Office

The City Manager's Office has overall responsibility for the City Clerk Department, including coordinating information presented to the City Council. The City's Public Information Officer will be a key coordinator for outreach including press releases and website information during the application period and the Commission's community outreach process.



APPLICATION AND SELECTION PROCESS

What are the requirements to serve?

Any Berkeley resident who is 18 years of age or older at the time they submit their application, may apply for selection to the Independent Redistricting Commission.

Who can serve?

Current members of City boards and commissions that are appointed by the Mayor or Councilmembers can serve provided that they resign from their board or commission upon selection to the Independent Redistricting Commission (or as an alternate) and do not serve on any City commission during their tenure on the Independent Redistricting Commission. Persons who made a disclosable contribution to a candidate for Mayor or Councilmember may serve on the Commission if they disclose all such contributions made within the previous four years prior to the date of application.

Who is ineligible?

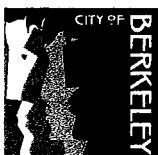
- City of Berkeley employees
- Qualified candidates for Berkeley Mayor or Councilmember (within 2 years of application)
- Current and former holders of Berkeley elective office (within 2 years of application)
- Paid staff or unpaid interns to the Mayor or Councilmembers (within 2 years of application)
- Family members of the Mayor or Councilmember or their staff
- Officers, paid staff, or paid consultants for campaign committees for Berkeley Mayor or Councilmember (within 2 years)
- Contractors or subcontractors of the City of Berkeley

What else should I know before I apply?

For two years after the termination of service on the Independent Redistricting Commission, you may not be a paid staff member for the Mayor or a Councilmember or serve on a City board or commission. Additionally, no Commission member may be a candidate for Mayor or City Council in the next election in which that office is on the ballot.

What happens after I apply?

The application deadline is October 9, 2020. The City Clerk will review all applications for eligibility. In January 2021, the City Clerk will randomly select eight Commissioners and eight alternates (one from each Council district). Within 10 days of selecting the initial commissioners, the Commission will convene to select five additional at-large members and alternates. The full Independent Redistricting Commission then begins meeting regularly.



MAP REQUIREMENTS

Maps are subject to the criteria outlined in Charter Article V, Section 9.5. The final map will be drawn so that the districts are as equal in population as practicable, compliant with state and federal laws, and geographically contiguous.

The Commission will take into consideration topography, geography, cohesiveness, contiguity, and integrity and compactness of the districts, as well as existing communities of interest as defined below. The Commission will also utilize easily understood district boundaries such as major traffic arteries and geographic boundaries (to the extent they are consistent with communities of interest). The geographic integrity of a neighborhood or community of interest will be respected to the extent possible.

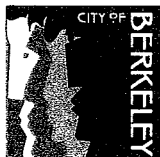
As used here, “communities of interest” means contiguous populations that share common social and economic interests. These populations should be included within a single district for purposes of effective and fair representation.

Examples of “common social and economic interests” are areas where people:

- Share similar living standards
- Use the same transportation facilities
- Have similar work opportunities
- Have access to the same media of communication relevant to the election process
- Live in neighborhoods
- Are students/have organized student housing
- Have shared ages
- Have shared racial demographics

Communities of interest shall not include relationships with political parties, incumbents, or political candidates. Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party; i.e., the Commission may not consider the residence of current Councilmembers and a current Councilmember may be “drawn out” of their current district.

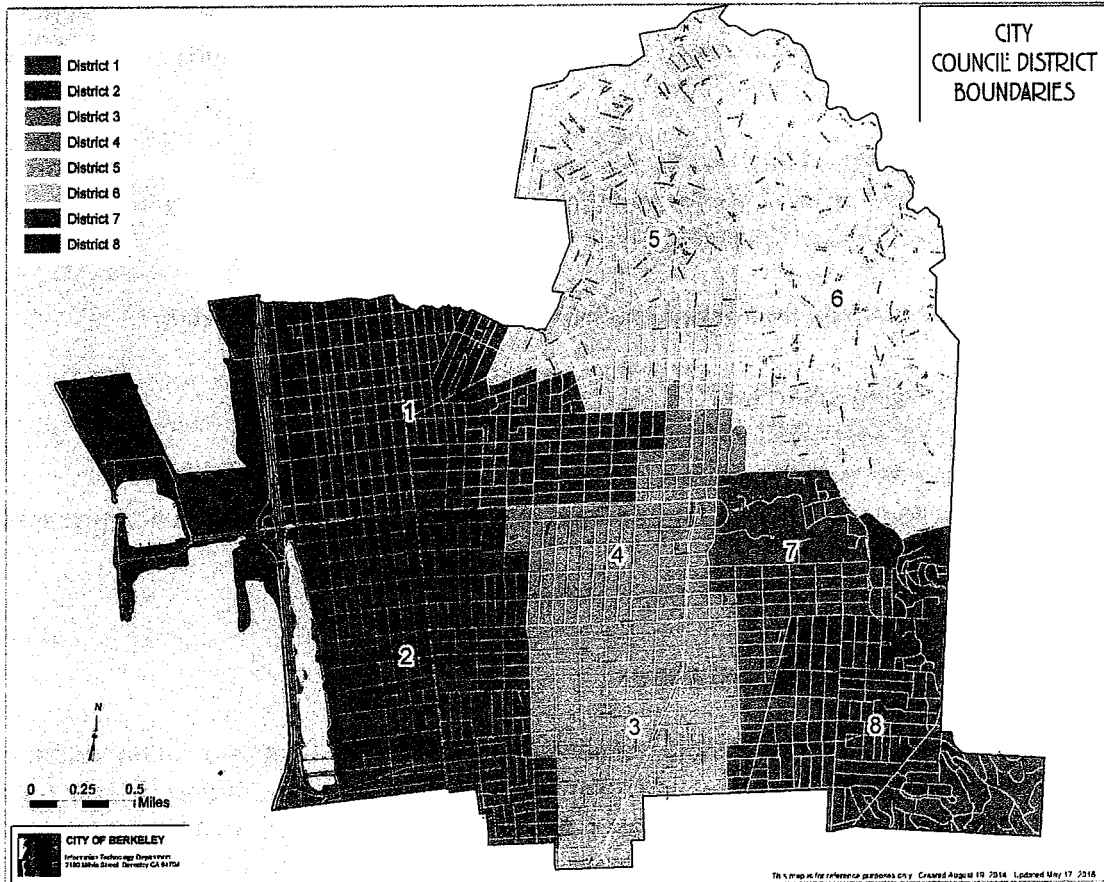
The Commission may consider existing district boundaries as a basis for developing new district boundaries.



FINAL DISTRICT MAP

Map Affirmed by Commission

The final map must be adopted by the Commission with at least seven affirmative votes (of the thirteen voting members) and submitted to the City Council. The City Council will adopt a redistricting ordinance implementing the final map without change. The boundaries of the districts will be effective until the adoption of new district boundaries following the next decennial federal census.



Final Map – 2010 Census Redistricting Process

Impasse Proceedings

If the Commission is unable to reach seven affirmative votes (of the thirteen voting members) for the final map, the map with the most votes will be placed on the ballot for the voters to consider. If the final map is rejected by the voters, the Commission will attempt to adopt a new redistricting plan within thirty days with at least seven affirmative votes. If the Commission is unsuccessful, the City Clerk will recommend a list of at least three special masters to develop a redistricting plan. The Commission will select a special master to develop the redistricting plan, and the City Council will adopt the redistricting plan determined by the special master.

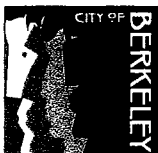


EXHIBIT A: ELIGIBILITY WORKSHEET

Are you a resident of the City of Berkeley and 18 years of age or older?

No (ineligible)

Have you been a qualified candidate for Mayor or Councilmember within the past two years?

Yes (ineligible)

Are you (or have you been in the last two years) Berkeley Mayor, Councilmember, Auditor, School Board Director, or Rent Board Stabilization Board Commissioner?

Yes (ineligible)

Are you the immediate family member of the Mayor or any Councilmember, or immediate family member of any staff to the Mayor or any Councilmember?

Yes (ineligible)

Are you employed by the City of Berkeley?

Yes (ineligible)

Are you performing paid services under contract with the City of Berkeley (including subcontractor employees)?

Yes (ineligible)

Have you served as an officer, paid staff, or paid consultant of a campaign committee of a candidate for Berkeley Mayor or Councilmember within the past two years?

Yes (ineligible)

Are you currently, or have you been within the last two years, a paid staff member or unpaid intern to the Berkeley Mayor or any Councilmember?

Yes (ineligible)

Are you disqualified from serving in public office pursuant to Government Code sections 1021, 1021.5, or 1770, and the Constitution and laws of the State of California, except citizenship requirements?

Yes (ineligible)

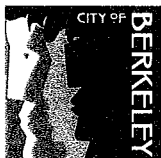
Do you serve on a City of Berkeley board or commission appointed by the Mayor or Councilmembers?

Eligible. However, you must resign from the board or commission if selected and agree not to serve on the City's other boards or commissions during your term on the IRC.

Have you made disclosable monetary or non-monetary contributions to a candidate for Mayor or Councilmember in the City of Berkeley within the past four years?

Eligible. However, you must disclose those contributions under penalty of perjury.

Congratulations - you are eligible to serve on the Independent Redistricting Commission!



Lee, Katherine

From: PRC (Police Review Commission)
Sent: Friday, August 21, 2020 11:13 AM
To: Lee, Katherine
Subject: FW: Commissions and Election Activities
Attachments: Commissioner's Manual, pp 40-41.pdf

From: Numainville, Mark L.

Sent: Friday, August 21, 2020 11:10 AM

To: Allen, Shallon L. <SLAllen@cityofberkeley.info>; Allen, Shannon <ShAllen@cityofberkeley.info>; Bednarska, Dominika <DBednarska@cityofberkeley.info>; Bellow, LaTanya <LBellow@cityofberkeley.info>; Bryant, Ginsi <GBryant@cityofberkeley.info>; Buckley, Steven <StBuckley@cityofberkeley.info>; Burns, Anne M <ABurns@cityofberkeley.info>; Carnegie, Brittany <BCarnegie@cityofberkeley.info>; Castrillon, Richard <rcastrillon@cityofberkeley.info>; Chu, Stephanie <SChu@cityofberkeley.info>; Crane, Fatema <FCrane@cityofberkeley.info>; Dahl, Nathan <NDahl@cityofberkeley.info>; Davidson, Amy <ADavidson@cityofberkeley.info>; Enke, Joe <jenke@cityofberkeley.info>; Funghi, Amelia <Afunghi@cityofberkeley.info>; Garcia, Viviana <ViGarcia@cityofberkeley.info>; Goldman, Nina <NGoldman@cityofberkeley.info>; Greene, Elizabeth <EGreene@cityofberkeley.info>; Harvey, Samuel <SHarvey@cityofberkeley.info>; Hollander, Eleanor <EHollander@cityofberkeley.info>; Javandel, Farid <FJavandel@cityofberkeley.info>; Katz, Mary-Claire <MKatz@cityofberkeley.info>; Lovvorn, Jennifer <JLovvorn@cityofberkeley.info>; May, Keith <KMay@cityofberkeley.info>; Miller, Roger <RMiller@cityofberkeley.info>; Obermeit, Heidi <hobermeit@cityofberkeley.info>; Pearson, Alene <apearson@cityofberkeley.info>; PRC (Police Review Commission) <prcmailbox@cityofberkeley.info>; Romain, Billi <BRomain@cityofberkeley.info>; Slaughter, Kieron <kslaughter@cityofberkeley.info>; Terrones, Roberto <RTerrones@cityofberkeley.info>; Tsering, Dechen <DTsering@cityofberkeley.info>; Uberti, Mike <MUberti@cityofberkeley.info>; Warren, Elliot <EWarren@cityofberkeley.info>; Works-Wright, Jamie <JWorks-Wright@cityofberkeley.info>

Cc: Commission <Commission@cityofberkeley.info>

Subject: Commissions and Election Activities

Secretaries,

Recently, some candidates for elective city office have contact you directly or sent unsolicited communications to the commission.

If a candidate contacts you directly, advise them to consult the commission page for relevant information on meetings and agendas (noting that most commissions are not currently meeting due to COVID-19). If they are seeking documents, treat this as a Public Records Act request. If they wish to engage you in a dialogue, you may engage as you determine appropriate in a way that does not hinder you doing your regular work. You may ask them to submit questions in writing if you wish.

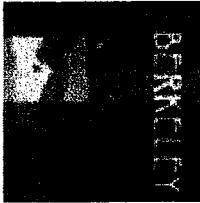
Communications from a candidate for office or from a campaign committee should be addressed in the same manner as any other communication from members of the public. They should be included in an upcoming agenda packet, but should not be distributed to commissioners outside of the normal process for communications.

Additionally, Commissions may not take official positions or host a public forum or debate for measures or candidates. Commissioners may engage in election-related activity as community

members, and may use their commission title(s), current or former, for identification purposes, so long as they affirmatively declare that they do not represent the City or any legislative body of the City.

Please see the attached pages from the Commissioners Manual regarding commissioners' role in communicating with the public and with the City Council, and on limitations on election-related activity.

Mark Numainville, City Clerk
City of Berkeley
2180 Milvia Street, 1st Floor
Berkeley, CA 94704
(510) 981-6909 direct
mnumainville@cityofberkeley.info



3) General Public

The most direct way for the general public to communicate with commissions/commissioners is to attend commission meetings.



Members of the public may also communicate with commissions by sending a letter or an e-mail to the secretary, who will forward the e-mail to the commission in the agenda packet. If the communication is submitted after the packet is published, copies may be distributed to the commissioners and placed in the public viewing binder.

All communications from the commission to members of the public are transmitted through the commission secretary. Similarly, arriving communications are received by the secretary and relayed to the commission through the agenda packet. The secretary is responsible for including all communications received in the agenda packet according to publication deadlines. If the commission wishes to recommend Council action in response to a public comment or communication, the topic must be agendaized at a future meeting for commission discussion and action.

Commissioners may interact with the public; however, if commissioners are contacted by the public outside of a meeting, commissioners should encourage them to send their comments to the secretary for distribution to all commissioners or come to a commission meeting and speak at public comment. This will allow the full commission to hear and consider all pertinent information and points of view.



Commissions may not, without approval of Council, represent City policy or communicate in an official manner outside of Commission meetings. This prohibition includes any type of public surveys and/or polling of the public, distributing informational flyers, newsletters, mass e-mails, or other similar media.

4) Individual Commissioners

Commissioners may not represent their Commission or the City to the general public or the media unless the Council authorizes the commission to authorize the individual commissioner to do so. Similarly, commissioners may not use city logos, branding, or collateral to represent themselves externally. Please see Chapter V, Section G for more detail. A commission may authorize one of its members to appear before another City commission without Council approval.

Any time a commissioner uses their commission title or references their membership on a city commission when speaking publically, they must state the following:

"I am speaking in an individual capacity and not representing the [Commission Name] or the City of Berkeley."

Each commissioner also has the obligation to work cooperatively with other commissioners. Commissioners should exercise self-discipline and strive always to be objective, fair, and courteous with each other as well as with staff and the public. A healthy respect for the time of other commissioners, staff, and the public is of critical importance.

5) Press and Other Media

Inquiries from the media should be handled only by the chair or a representative designated by the commission, who may clarify actions taken by the commission, fairly and accurately recap commission conversations, or outline next steps. The Chair or designee must not editorialize, offer personal opinions, or speculate on future actions when speaking in an official capacity. Any commissioner may recite commission actions taken and state factual accounts of those actions.

6) Election-Related Activity

While potential ballot measures are under consideration for inclusion on the ballot, commissioners may communicate with Council, but they should limit themselves to advisory comments only. If a commission wishes to recommend a ballot item to Council, they should discuss it at a commission meeting, which offers the public a chance to participate, and then make their recommendation to Council via normal channels. Once a measure is placed on the ballot, Council has already taken action, so a commission, as an advisory body to Council, may not endorse or oppose the measure.

Commissions may not take official positions or host a public forum or debate for measures or candidates. Commissioners may engage in election-related activity as community members, and may use their commission title(s), current or former, for identification purposes, so long as they affirmatively declare that they do not represent the City or any legislative body of the City.

7) Summary

When considering the appropriateness of communicating publically as a commissioner, remember these simple guidelines.

- The City Council speaks for the City
- Commissions speak to the Council
- Commissioners speak as private individuals

Lee, Katherine

From: Klatt, Karen
Sent: Wednesday, July 29, 2020 2:06 PM
To: Klatt, Karen
Subject: MHSA Three Year Plan Community Input Meeting Presentation

Greetings!

If you were not able to participate in one of the MHSA Community Input Meetings over the last two weeks, but would still like to provide input into the plan and/or on unmet mental health needs in Berkeley, see below:

[Click here](#) for a link to the MHSA Plans and Updates webpage where the MHSA Three Year Plan Community Input meeting presentation is posted in English and Spanish. If you review the presentation and would like to provide input, on it, or on any unmet mental health needs in the City of Berkeley, contact Karen Klatt, MHSA Coordinator, KKlatt@cityofberkeley.info, or (510) 981-7644.

Please provide input by Monday, August 10th and share widely with anyone who you think would be interested in informing this process.

Thanks,

Karen

Lee, Katherine

From: Lee, Katherine
Sent: Thursday, August 27, 2020 2:58 PM
To: Lee, Katherine
Subject: FW: Mental Health Services Act (MHSA) FY2020/21 - FY2022/23 Three Year Program and Expenditure Plan

Categories: For Agenda

Commissioners:

FYI.

Katherine J. Lee
Police Review Commission Officer
City of Berkeley
510.981.4960

From: Klatt, Karen
Sent: Tuesday, August 25, 2020 11:48 AM
To: Klatt, Karen <KKlatt@cityofberkeley.info>
Subject: Mental Health Services Act (MHSA) FY2020/21 - FY2022/23 Three Year Program and Expenditure Plan

Greetings!

Your input and comments are invited on the **Mental Health Services Act (MHSA) FY2020/21 – 2022/23 Three Year Program and Expenditure Plan** which has been posted on the website for a 30-day Public Review and Comment period.

The 30-day Public Review is being held from Tuesday, August 25th through Wednesday, September 23rd and will provide an opportunity for input on proposed MHSA funding and programming during the three year timeframe. Following the 30-day Public Review there will be another opportunity to provide input at a Public Hearing that is planned to be held on September 24th at 7:00pm at the Mental Commission meeting. The Public Hearing will be publicly noticed and likely held on the Zoom forum.

In order to provide input please respond by **5:00pm on Wednesday, September 23, 2020** by directing your feedback via email, phone or mail to:

Karen Klatt, MEd
MHSA Coordinator
City of Berkeley Mental Health
3282 Adeline St.
Berkeley, CA 94704
(510) 981-7644 - Ph.
(510) 596-9299 - Fax
KKlatt@ci.berkeley.ca.us

Please be aware that e-mail communication can be intercepted in transmission or misdirected. The information contained in this message may be privileged and confidential. If you are NOT the intended recipient, please notify the sender immediately with a copy to HIPAAPrivacy@cityofberkeley.info and destroy this message immediately.

Lee, Katherine

From: Kitty Calavita <kccalavi@uci.edu>
Sent: Monday, July 27, 2020 10:59 AM
To: Lee, Katherine
Subject: 2020 RIPA Report
Attachments: ripa-board-report-2020.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

WARNING: This email originated outside of City of Berkeley.
DO NOT CLICK ON links or attachments unless you trust the sender and know the content is safe.

Hi Kathy:

Hope you are getting some R & R.

Could you please forward the latest RIPA Report to Commissioners? Thanks.

Kitty

RACIAL &
IDENTITY
PROFILING
ADVISORY
BOARD

ANNUAL
REPORT
20
20

RACIAL AND IDENTITY PROFILING ADVISORY (RIPA) BOARD

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- TIMOTHY WALKER**, Senior, San Francisco State University; Mentor, Community Coalition, Los Angeles; *Appointed by the Attorney General of California*

The Racial and Identity Profiling Advisory (RIPA) Board thanks the following staff from the California Department of Justice for their assistance and contributions to this report:

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The RIPA Board thanks former Associate Governmental Program Analyst Kelsey Geiser for her significant contributions and dedication to this initiative over the years.

The RIPA Board thanks Alfred Palma from the California Department of Justice for his diligence and for serving as the travel coordinator to the Board.

The RIPA Board thanks the Commission on Peace Officer Standards and Training (POST) for its partnership and looks forward to continuing to build on this collaboration.

The RIPA Board thanks Magnus Lofstrom, Ph.D., Brandon Martin, MA, and Justin Goss, MPP, of The Public Policy Institute of California (PPIC). PPIC researchers provided technical research assistance but are not responsible for the accuracy of the raw source data and/or any conclusions extrapolated from the technical research assistance provided and contained in the RIPA report.

The RIPA Board thanks Jack Glaser, Ph.D., Professor, Goldman School of Public Policy, University of California, Berkeley; and Emily Owens, Ph.D., Professor, Department of Criminology, Law and Society and Department of Economics, University of California, Irvine, for their assistance in preparing this year's report.

The RIPA Board appreciates the participation of community members, members of law enforcement, advocates, researchers, and other stakeholders. Public participation is essential to this process, and the RIPA Board thanks all Californians who have attended meetings, submitted letters, and otherwise engaged with the work of the Board. We look forward to continuing input from the public.

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EXECUTIVE SUMMARY

California's Racial and Identity Profiling Advisory Board (Board) is pleased to release its Third Annual Report. The Board was created by the Racial and Identity Profiling Act of 2015 (RIPA) to shepherd data collection and provide public reports with the ultimate objective to eliminate racial and identity profiling and improve and understand diversity in law enforcement through training, education, and outreach. For the first time, the Board's report includes an analysis of the stop data collected under RIPA, which requires nearly all California law enforcement agencies to submit demographic data on all detentions and searches. This report also provides recommendations that law enforcement can incorporate to enhance their policies, procedures, and trainings on topics that intersect with bias and racial and identity profiling. This report provides the Board's recommendations for next steps for all stakeholders – advocacy groups, community members, law enforcement, and policymakers – who can collectively advance the goals of RIPA. In rendering these recommendations, the Board hopes to further carry out its mission to eliminate racial and identity profiling and improve law enforcement and community relations.

Recommendations for Law Enforcement Agencies

The Board has engaged in an extensive review of best practices to provide law enforcement with concrete recommendations focused on improving bias-free policing and civilian complaint policies and procedures. The Board recommends that law enforcement engage with their communities as they develop and improve policies and practices that are strong and effective while also enhancing transparency, building trust, and promoting the safety and, well-being of all parties. Below we provide an overview of the recommendations included in this year's report, and we strongly encourage stakeholders to review the detailed policies set forth later in this report and in the attached Appendix.

Policies: This report contains model language for the following: a clear, written bias-free policing policy; definitions related to bias; the limited circumstances when personal characteristics of an individual may be considered; training; data collection and analysis; encounters with the community; accountability and adherence to the policy; and supervisory review. The Board recommends that all agency personnel, both sworn and civilian, receive training on their bias-free policing policies. Agencies are further encouraged to develop policies and training on how to prevent bias by proxy when responding to a call for service. In addition to including model language, the Board conducted a policy review to assist Wave 1 agencies in identifying areas of opportunity to incorporate the best practices and model language presented in this report and the 2019 RIPA Annual Report. For the purposes of this report, Wave 1 agencies refers to the eight largest law enforcement agencies in the state that began collecting stop data on July 1, 2018, and reported it to the department on April 1, 2019.

Civilian Complaints: Law enforcement agencies should evaluate their civilian complaint process and align their complaint forms, where practical, with the best practices laid out in this report. The Board conducted a review of the complaint forms of the Wave 1 agencies to identify areas of opportunity to adopt additional best practices. The report examines the civilian complaint data, including data on reported racial and identity profiling allegations submitted to the Department of Justice by all RIPA reporting agencies in 2018; the report then highlights the factors that impact the disparities in the number of reported complaints by each agency.

Recommendations for Community Members

The 2020 Annual Report contains recommendations that advocates and community members can use to engage with law enforcement to improve policies, accountability, and enforcement measures. The Board hopes community members can take the model language and best practices delineated in the report to push law enforcement agencies to improve their policies and procedures. The Board also thanks members of the community for attending Board and subcommittee meetings and providing public comment. The Board hopes community members will continue to engage with the Board regarding its work.

Recommendations for Policymakers

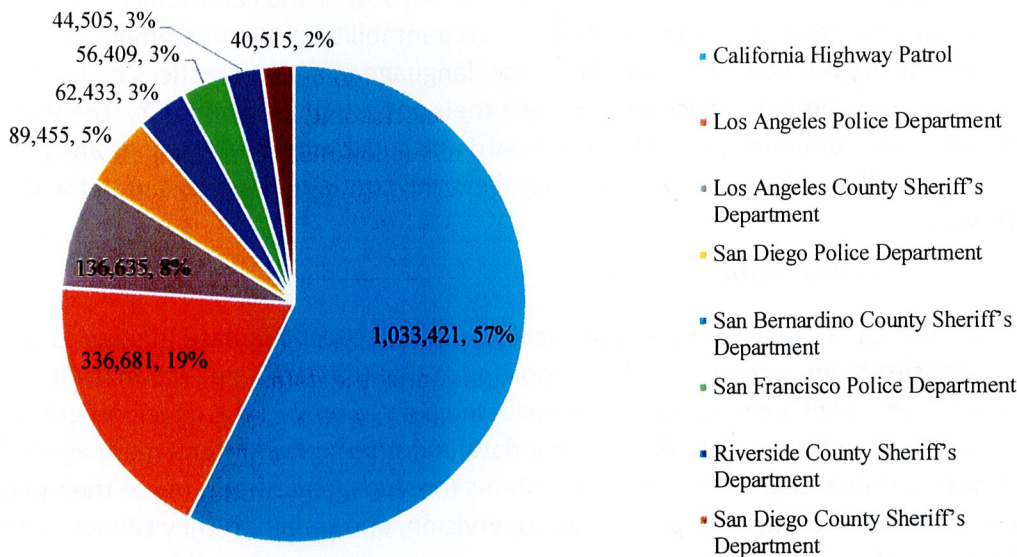
The Board hopes the California Legislature and local governments can increase funding to law enforcement agencies to implement RIPA by supporting not only the data collection itself, but also in supporting law enforcement's evaluation of the collected data as well as the development of anti-bias training and policies. To effectively fulfill their mandate under RIPA, law enforcement agencies must develop and further refine their data collection systems for stops, review and revise their policies and practices, and make other changes to personnel, supervision, and training. They cannot do so without additional funding and support.

With respect to civilian complaints, the Board recommends that the Legislature amend Penal Code section 148.6 by striking the language imposing criminal sanctions for filing a false complaint. By doing so, the Board hopes to resolve a conflict between state and federal law, as well as remove cautionary language that is potentially chilling to the filing of a civilian complaint.

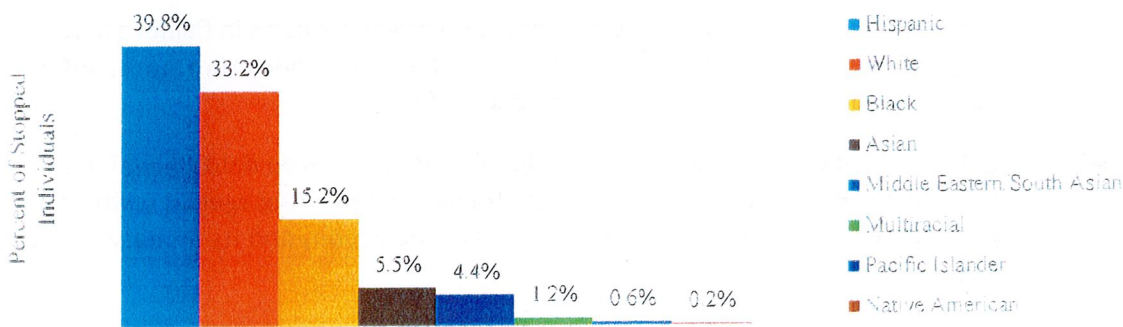
Findings Regarding RIPA Stop Data

- Between July 1, 2018 and December 31, 2018, the eight largest agencies in California, referred to as Wave 1 agencies in this report, collected data on vehicle and pedestrian stops. RIPA defines a stop as a detention and/or search by a peace officer.
- Reporting agencies stopped over 1.8 million individuals during the stop data collection period. The California Highway Patrol conducted the most stops of all reporting agencies, which is unsurprising given the size and geographic jurisdiction of the agency and its primary mission with respect to highway safety.

Number of Stops by Agency



- 95.3 percent of stops were officer-initiated, while 4.7 percent of stops were in response to a call for service, radio call, or dispatch.

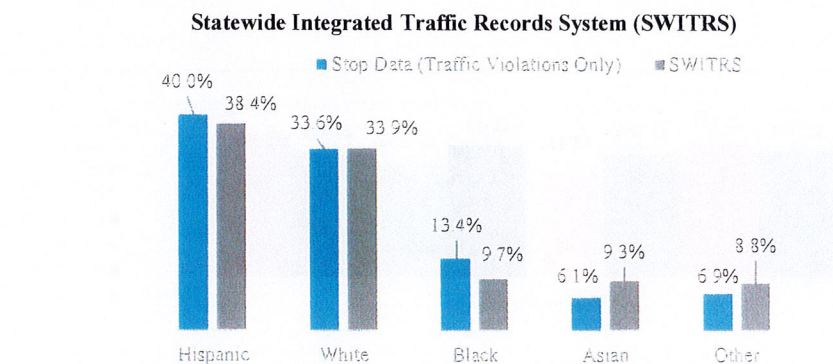
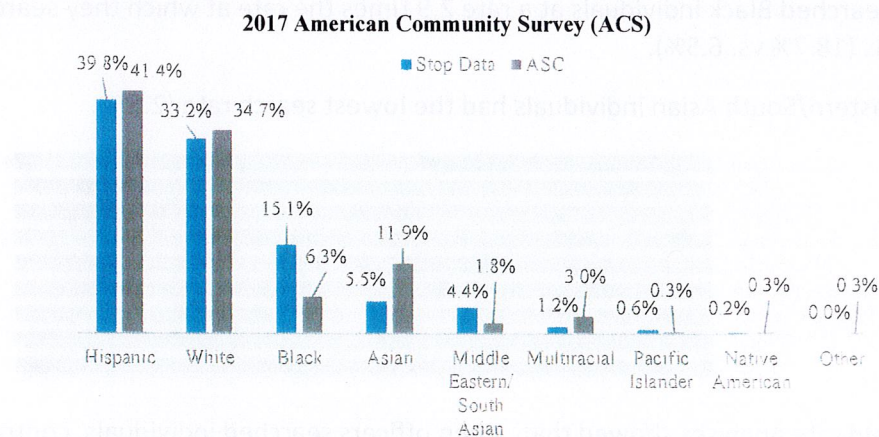


- Individuals perceived to be Hispanic (39.8%), White (33.2%), or Black (15.2%) comprised the majority of stopped individuals.

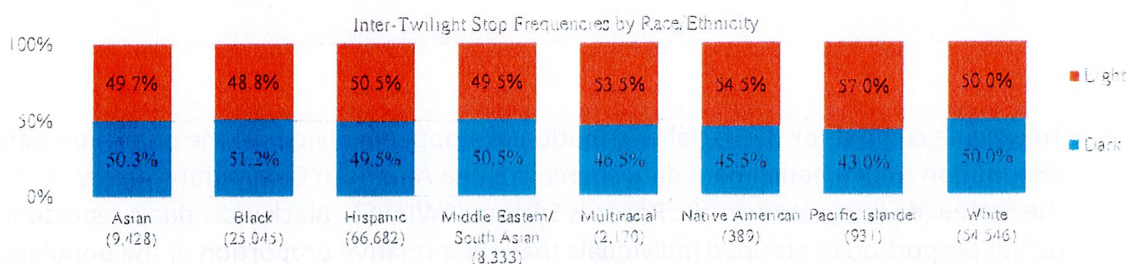
- The most commonly reported reason for a stop across all racial/ethnic groups was traffic violations, followed by reasonable suspicion. A higher percentage of Black individuals were stopped for reasonable suspicion than any other racial identity group.



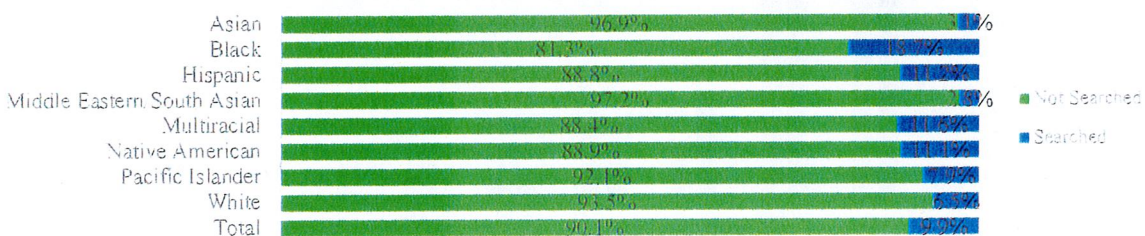
- To provide context for the racial distribution of stopped individuals, the Board compared the distribution to two benchmark data sources: 1) the American Community Survey (ACS) and 2) the Statewide Integrated Traffic Records System (SWITRS). Black individuals represented a higher proportion of stopped individuals than their relative proportion of the population in both benchmark datasets.



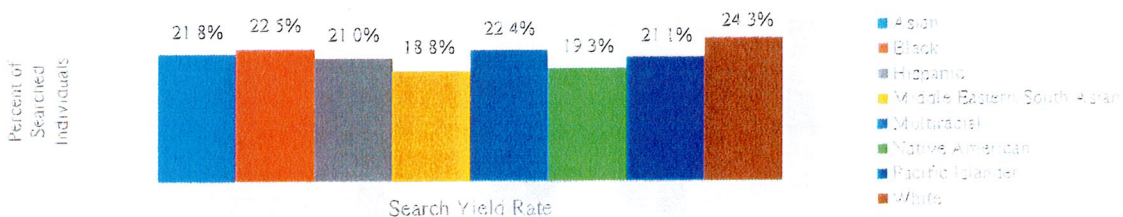
- The veil of darkness (VOD) method is a third benchmarking method used this year. The VOD analysis compares the proportion of individuals stopped during daylight hours to the proportion of individuals stopped when it is dark outside during the *intertwilight period*, i.e., the time of day that is dark during Standard Time, but light during Daylight Savings Time. Having a higher proportion of stops of individuals of a particular racial or ethnic group occur in the light, compared to White individuals, may be considered evidence of bias towards that group. The VOD analysis of this year's data indicated disparities in stops during light hours vs. dark hours for some racial and ethnic identity groups. For example, individuals perceived to be Pacific Islander or Multiracial had a higher proportion of their stops occur during light hours than individuals perceived to be White.



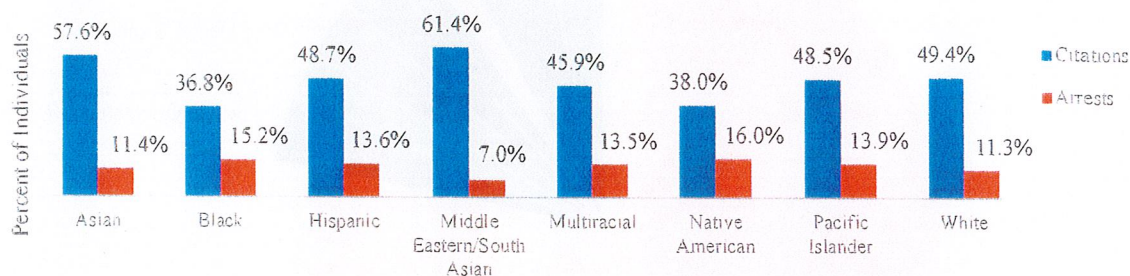
- Overall, 9.9 percent of stopped individuals were subject to a person or property search.
- Officers searched Black individuals at a rate 2.9 times the rate at which they searched White individuals (18.7% vs. 6.5%).
- Middle Eastern/South Asian individuals had the lowest search rate (2.8%).



- Search yield rate analyses showed that, when officers searched individuals, contraband or evidence was generally found on White individuals at higher rates than individuals from all other groups.



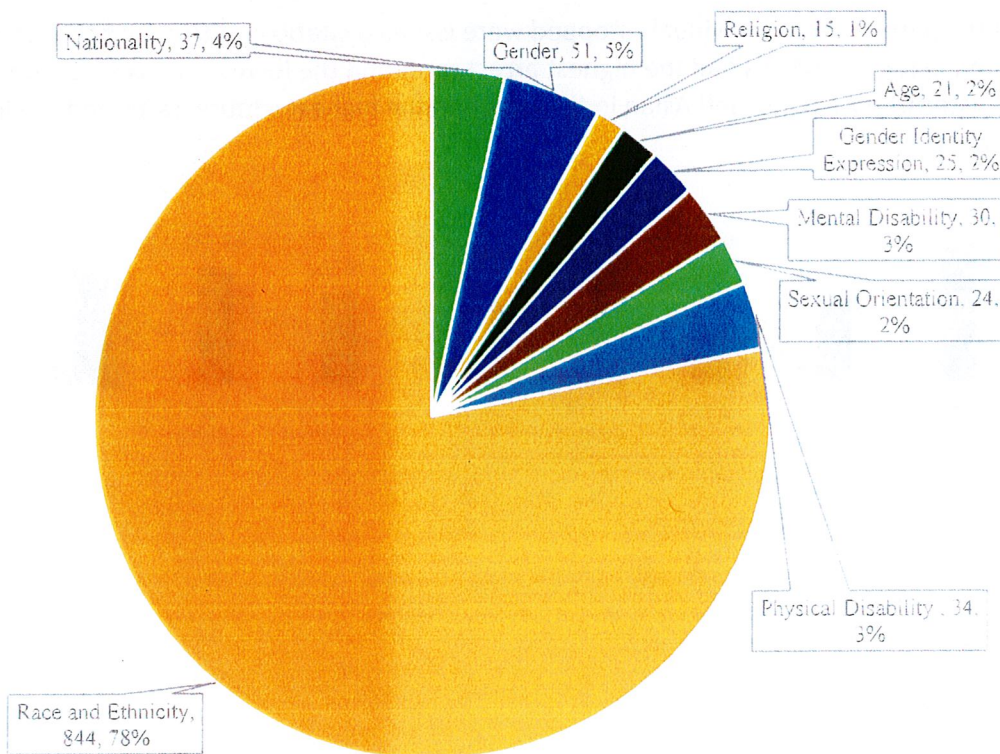
- When examining search yield rates by the presumed level of discretion available to the officer in deciding to conduct a search, yield rates for racial/ethnic groups of color were lower than for White individuals for higher-discretion searches, i.e., searches for which the only basis for search was “consent given.” This was also true for most racial/ethnic groups of color when only examining lower discretion searches (searches in which the basis for search was incident to arrest, vehicle inventory, or search warrant), with the exception of Black and Multiracial individuals, who had higher yield rates than White individuals for lower discretion searches.
- 60.3 percent of all individuals stopped were issued a citation and/or arrested. Native American and Black individuals had the highest arrest rates and the lowest rates of citation. Middle Eastern/South Asian and Asian individuals had the highest citation rates and the lowest arrest rates.



Findings Regarding Civilian Complaint Data

There were 1,081 allegations of racial or identity profiling filed in 2018 with the 134 law enforcement agencies subject to RIPA. Of these, 78 percent of the complaints included allegations of racial or identity profiling.

Total Racial and Identity Profiling Allegations Reported



The following table shows the total number of civilian complaints reported in 2018 by Wave 1 agencies, the number of allegations of racial or identity profiling, and the number of sworn personnel each agency employed in 2018. There were notable disparities in the total complaints and racial and identity profiling allegations reported by agency. The reasons for these disparities likely include: 1) lack of uniformity regarding what constitutes a “civilian complaint” and how to quantify and document complaints; 2) lack of uniformity regarding how to process civilian complaints; 3) varying accessibility and knowledge of an agency’s complaint process; 4) disparate accessibility for people with disabilities; and 5) the potential deterrent impact of Penal Code section 148.6.

*Wave 1 Agency Complaints Reported and
Number of Sworn Personnel Employed in 2018*

Agency	Total Complaints Reported	Profiling Complaints Reported	Sworn Personnel
Los Angeles Police Department	1,907	274 (14%)	9,974
Los Angeles County Sheriff's Department	986	67 (6.7%)	9,426
California Highway Patrol	287	35 (12%)	7,286
San Diego County Sheriff's Department	9	1 (11%)	2,572
San Francisco Police Department	678	21 (3%)	2,306
San Bernardino County Sheriff's Department	104	35 (33%)	2,018
Riverside County Sheriff's Department	46	4 (9%)	1,795
San Diego Police Department	74	15 (20%)	1,731

From: Mike Chang [<mailto:michaelchang1942@gmail.com>]
Sent: Friday, August 14, 2020 1:27 AM
To: Lee, Katherine <KLee@cityofberkeley.info>
Subject: Fwd: You're Invited! From Police Reform to a New Public Safety Model

Hi Kathy,

I hope you're getting a bit of rest. Can you send this to the others?

Thanks,

Mike

Begin forwarded message:

From: POLICING EQUITY <coordinator@policingequity.org>
Date: August 13, 2020 at 12:55:48 PM PDT
To: Michael Chang <michang50@yahoo.com>
Subject: You're Invited! From Police Reform to a New Public Safety Model
Reply-To: coordinator@policingequity.org



From Police Reform to a New Public Safety Model

What do legal scholars have to say about the broken parts of our systems?

Monday, August 17, 2020 | 4-6 pm EST

Dear Michael,

With grave racial disparities in the COVID-19 pandemic and a global spotlight on race and policing in the United States, America's civil unrest has reached new levels of mobilization. In its wake, calls have shifted from "reform the police" to "defund police" and "reimagine public safety." As we welcome this shift in mindset, at this live-streamed event, legal scholars will seek to answer the question: "What are our best strategies toward redesigning, funding, and implementing a new public safety model?"

Special Remarks | 4:00 - 4:10 pm ET

Vanita Gupta

From Federal Intervention to Black-Owned | 4:15 - 4:45 pm ET

Monica Bell & Barry Friedman

From Dignity to Equity | 4:45 - 5:20 pm ET

L. Song Richardson & Tom Tyler

From Justice to Freedom | 5:30 - 6:00 pm ET

A Conversation with Phillip Atiba Goff & Sherrilyn Ifill

[RSVP at policingequity.org/fireside-chats](https://policingequity.org/fireside-chats)

If you are unable to attend, a recording will be available online after the event.



*Visit [CPE's website](https://policingequity.org) and Phil's [AUDACIOUS TEDtalk](https://audacious.ted.com) to learn more.

The Center for Policing Equity

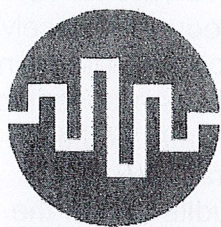
1925 Century Park East, Suite 1700 | Los Angeles, California 90067

347-948-9953 | giving@policingequity.org

Lee, Katherine

From: Berkeley City Auditor <auditor@cityofberkeley.info>
Sent: Thursday, August 27, 2020 4:25 PM
To: Lee, Katherine
Subject: Update From the City Auditor

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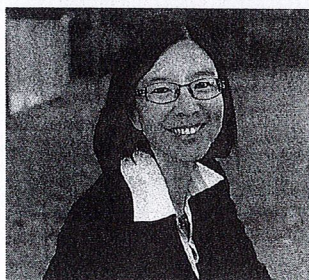


BERKELEY CITY AUDITOR

Jenny Wong, City Auditor

Promoting transparency and accountability in Berkeley government.

Audit News
from the City Auditor
August 2020



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Library Uses Tax Funds by the Book, But More Internal Controls Needed

We audited the Library's use of the Library Tax Fund to ensure that the Library is spending its funding appropriately as it continues to meet evolving community needs. This audit is part of an effort to audit activities funded by special taxes.

Here's what we found: The Library's transactions aligned with the purpose of the Library Tax Fund in fiscal year 2018. Additionally, we did not find indicators of fraud, waste, or misuse in our review of transactions. Some of the Library's internal controls can be improved to more clearly define use of the reserve. The Library currently does not have a strategic plan, though the Library has set some goals and developed budget priorities. The Library also does not consistently evaluate its programs to measure progress towards goals.

I will present this report to the Board of Library Directors at their meeting on Wednesday, September 2, and to the City Council on Tuesday, September 15. Thanks to my

staff who completed this audit: Caitlin Palmer, Auditor-In-Charge; Tracy Yarlott-Davis, Team Member; and Claudette Biemeret, Former Audit Manager.

[Read the full report](#)

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Policing Audits Update

On August 14, we initiated two audits on the Police Department's calls for service and budget. These audits are in response to the many recent requests I received from Berkeley residents for my office to take a closer look at Police Department activities and budget. It also responds to Council Member Bartlett's proposal to conduct an analysis of calls for service and traffic enforcement data, and the Mayor's omnibus item passed on July 14. I want to thank several community members for reaching out to me about your interest in these audits. Given the shortened timeline of these audits, the exact scope will depend on data access and data quality. I have assigned two experienced auditors to begin work on these projects. Our goal is to complete these audits by spring 2021.

We are currently in the process of hiring a new Auditor 1 to support these audits. Staffing and budget changes began with our Audit Manager leaving in February for a position with the BART Inspector General. Instead of hiring a new Audit Manager, in light of the current COVID-19 induced budget situation, I proposed a cost-saving approach of organizing our team to have two Senior Auditors share supervisory responsibility, and instead fill the vacant position with an Auditor 1. The number of staff remains the same, but these budget deferrals that I proposed contribute to needed savings in light of the budget situation. See our [COVID-19 budget report](#).

I want to thank the community for their support and the Mayor and City Council for approving our proposed budget. My office looks forward to continuing to produce high quality audits to benefit the Berkeley community.

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Air Quality Concerns and Resources

Although air quality levels in Berkeley have greatly improved since last week, conditions can change quickly. Multiple fires throughout the region continue to burn and may affect Berkeley in the days ahead. The most important thing you can do to prepare is to sign up for emergency notifications at acalert.org. This will ensure you can be reached in an emergency.

[https://www.sfchronicle.com/bayarea/article/Judge-restricts-Oakland-s-use-of-tear-gas-15351373.php?utm_campaign=CMS%20Sharing%20Tools%20\(Premium\)&utm_source=share-by-email&utm_medium=email](https://www.sfchronicle.com/bayarea/article/Judge-restricts-Oakland-s-use-of-tear-gas-15351373.php?utm_campaign=CMS%20Sharing%20Tools%20(Premium)&utm_source=share-by-email&utm_medium=email)

San Francisco Chronicle

Judge restricts Oakland's use of tear gas, rubber bullets during protests

Matt Kawahara June 18, 2020 Updated: June 18, 2020 11:10 p.m.

A federal judge Thursday issued a temporary order limiting the Oakland Police Department and city of Oakland's use of tear gas and non-lethal munitions against people taking part in protests or demonstrations.

U.S. District Judge Joseph Spero granted the temporary restraining order to attorneys on behalf of the Anti Police-Terror Project, Community Ready Corps and several individuals.

The order prohibits police in Oakland from using tear gas and firing rubber bullets or flash-bang grenades at protesters, but it states police can use those measures if "reasonably necessary" to protect people from death or serious injury or prevent the "imminent destruction" of property at Oakland's City Hall, Oakland police headquarters or the OPD Eastmont Mall substation.

Flash-bang grenades can be fired "only in a safe direction" and not directly at people, according to the order. Tear gas and flash-bang grenades can only be used after "an audible warning" and "sufficient time to comply" has been issued, the order states.

The court also ruled that when summoning mutual aid from outside law enforcement agencies, OPD personnel should take up front-line positions between those officers and demonstrators.

In a June 10 public letter, interim Oakland Police Chief Susan Manheimer wrote the department had deployed smoke, gas and non-lethal munitions over four consecutive days of demonstrations beginning May 29. Manheimer wrote the measures were used "during unlawful assemblies and in exigent circumstance."

Manheimer wrote the department would "conduct a thorough review and assessment" of its tactics during the protests. Several Oakland city officials have expressed concerns over the use of tear gas amid protests sparked by the killing of George Floyd, who died May 25 in Minneapolis after a police officer knelt on his neck, and amid the coronavirus pandemic.

The order issued Thursday stated it will remain in effect "until further Order of the Court."

Matt Kawahara is a San Francisco Chronicle staff writer. Email: mkawahara@sfnchronicle.com Twitter: [@matthewkawahara](https://twitter.com/matthewkawahara)

1 This matter came before the Court's on June 18, 2020, at 1 p.m., on Plaintiffs'
2 Application for a Temporary Restraining Order and Order to Show Cause.

3 Based upon the agreement of the parties and good cause appearing,

4 IT IS HEREBY ORDERED, pending further hearing and the Court's Order, that
5 defendants City of Oakland, Police Chief Susan Manheimer, et al., and all persons acting on
6 their behalf and under their supervision are forbidden from:

- 7 1. Using tear gas or any other chemical weapons against persons taking part in a
8 protest or demonstration.
- 9 2. Firing rubber bullets or similar projectiles at persons taking part in a protest or
10 demonstration.
- 11 3. Firing flash bang grenades at persons taking part in a protest or demonstration.
- 12 4. The prohibitions of paragraphs 1 and 3 do not apply where, upon the decision of
13 the OPD Operations Commander or Incident Commander, it is determined that
14 the use of tear gas or any other chemical weapon or flash bang grenades is
15 reasonably necessary to protect the lives of people, protect people from serious
16 bodily injury, or to prevent the imminent destruction of property, tear gas or other
17 chemical weapons or flash bang grenades at Oakland City Hall, the OPD
18 Administration Building, or the OPD Eastmont Mall Substation to protect persons
19 or protect that property from destruction. Flash bang grenades may not be fired
20 directly at persons but must be fired only in a safe direction. To the fullest extent
21 possible, such use of tear gas or other chemical weapons and flash bang grenades
22 is allowed only after an audible warning of their use has been issued and after
23 sufficient time to comply has been granted.
- 24 5. In all actions in which the Oakland Police Department calls in police personnel
25 from other jurisdictions under mutual aid agreements, to the fullest extent
26 possible OPD personnel shall endeavor to assume front line positions between
27 mutual aid officers and demonstrators.
- 28

1 This Order shall remain in effect until further Order of the Court. This matter shall be
2 heard by the Court on July 2, 2020, on Plaintiffs' motion for a preliminary injunction.

3
4 SO STIPULATED.

5
6 SIEGEL, YEE, BRUNNER & MEHTA
7 WALTER RILEY
8 JAMES DOUGLAS BURCH

9 By: *Dan Siegel* _____
10 Dan Siegel

11 Attorneys for Plaintiffs

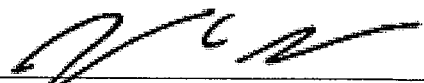
12 CITY OF OAKLAND

13 By: *David A. Pereda* _____
14 David A. Pereda

15 Attorneys for Defendants

16 IT IS SO ORDERED.

17
18 Dated: June 18, 2020

19 
20 _____
21 Hon. Joseph C. Spero
22 UNITED STATES MAGISTRATE JUDGE
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<https://www.sfchronicle.com/bayarea/article/For-foreseeable-future-Oakland-police-restricted-15444413.php>

SF Chronicle

For foreseeable future, Oakland police restricted in use of force during protests

Bob Egelko July 29, 2020 Updated: July 29, 2020 9:28 p.m.

A federal magistrate extended his previous restrictions against use of force by Oakland police Wednesday, prohibiting officers from using tear gas or flash-bang grenades against demonstrators, except when necessary to prevent serious injury or substantial property damage, and barring all use of wooden or rubber bullets and pepper-ball projectiles.

Chief U.S. Magistrate Joseph Spero had issued a temporary restraining order June 18 imposing similar restrictions on police during the protests that erupted after the police killing of George Floyd in Minneapolis. Protest groups sought the order after police fired tear gas and other projectiles at demonstrators during the May 29 weekend.

Unlike the restraining order, which had been extended several times before expiring Wednesday, Spero's injunction will remain in effect indefinitely. It also goes further than the restraining order by imposing the same restrictions on sheriff's deputies and any officers from other communities who are called in to aid Oakland police in the demonstrations. Another new provision requires officers to wear face masks and gloves at protests during the coronavirus pandemic.

Based on the injunction, demonstrators "should expect Oakland police will be more respectful of their rights," said Dan Siegel, a lawyer for groups that sought the order.

He said he would have preferred an outright ban on police use of tear gas. But Siegel said Spero's order may be the strongest so far among police restrictions also issued by judges in Seattle, Portland, Denver and Dallas.

According to published reports, Spero said at a hearing Tuesday that police may need tear gas or similar weapons when demonstrators start throwing rocks and bottles at them. A lawyer for the city was also quoted as saying other police agencies would refuse to aid Oakland officers if they were forbidden to use chemical weapons.

Officer Johnna Watson, a police spokeswoman, said Oakland police "will continue to abide by the court orders." The Police Department had previously opposed restrictions on use of force during demonstrations, but had accepted the terms of Spero's restraining order and agreed to some limits on officers' conduct.

Spero's injunction said police could use tear gas, flash-bang grenades or foam-tipped projectiles only if "there is an imminent threat of physical harm to a person or significant destruction of property," and if "other techniques, such as simultaneous arrests or police formations, have failed or are not reasonably likely to mitigate the threat."

The use of such weapons must be authorized by a police commander, and they must be “targeted at the specific imminent threat,” not fired indiscriminately into a crowd, Spero said.

Before using tear gas or similar weapons, the magistrate said, police in most circumstances must make at least two announcements, using loudspeakers audible to the crowd, asking demonstrators to leave and telling them they will be subject to arrest if they remain. The announcements will not be required, he said, only if “an immediate risk to public safety or significant property damage makes it impossible to do so.”

*Bob Egelko is a San Francisco Chronicle staff writer.
Email: beigelko@sfchronicle.com Twitter: [@BobEgelko](https://twitter.com/BobEgelko)*

<https://www.sfgate.com/news/article/Defund-the-police-sf-oakland-berkeley-san-jose-15444031.php>

'Defund the police' in action: How four Bay Area cities are (or aren't) reforming their police

By Alyssa Pereira and Amanda Bartlett, SFGATE

Published 3:20 pm PDT, Wednesday, July 29, 2020

It's been scrawled across the pavement in front of government buildings in bright yellow paint, etched into cardboard signs and poster boards as a rallying cry during protests and addressed as a possibility in countless city council meetings.

"Defund the police."

While cities across the country continue to reel in the aftermath of the police killing of George Floyd, some city officials, politicians and activists are taking action, working on measures aimed to divert funding away from what they view as bloated police budgets, and toward community-based organizations.

The objective, commonly summed up with the controversial phrase, has both ardent fans and detractors here in California. Yet, four of the biggest cities in the Bay Area — San Francisco, Oakland, Berkeley and San Jose — are all heeding calls to defund in different ways.

Here's how they plan to address the future of public safety.

San Francisco

It's been four years since the California Department of Justice stepped in to audit the San Francisco Police Department's expenditures and training programs, and subsequently handed them a laundry list of 272 points of reform. As of March, the department had only completed a mere 15% of such reforms.

Many of their constituents are angry, and in the wake of the George Floyd protests, they're demanding major changes be made to the police budget now. Cries to "defund the police" are stronger than ever.

San Francisco currently spends roughly 10% of its \$6 billion annual budget on its police force. But following demonstrations, Mayor London Breed and other city officials announced an effort to cut a portion of that funding, though it's still unclear just how much money will end up being diverted to other programs and what those programs might do.

In June, San Francisco Police Chief William Scott said in a roundtable that he has "an open mind" when it comes to the idea of rerouting funds from the SFPD to other organizations and services. In the virtual meeting at the time, hosted by Alice B. Toklas LGBT Democratic Club's Niki Solis and attended by San Francisco District Attorney Chesa Boudin, Sheriff Paul Miyamoto and Public Defender Mano Raju, Chief Scott said the moment had come to "think about community safety as a whole, and that goes way beyond policing."

A handful of immediate changes were made. Breed implemented a plan to stop police officers from responding to non-criminal activities — like a homeless individual setting up a tent, for example — and replaced responders with trained professionals better

equipped to manage such situations. Breed also banned the use of military-style weapons like tear gas and bayonets, mandating that the city take steps to remove those weapons from the department's stockpile. Then, Supervisor Shamann Walton introduced legislation — The Caution Against Racially Exploitative Non-Emergencies Act, or the CAREN Act — to outlaw racially motivated 9-1-1 calls.

But in early July, there was some backtracking. Chief Scott appeared at a police budget hearing to explain the 10-year growth of the police budget, pointing to an increased need to hire and retain more officers. He added that the force likely would not be able to continue making the reforms the California DOJ handed down in 2016 with the decrease in funding.

Activists didn't back down. Eight hours of public commentary with calls to defund and abolish the police followed Scott's presentation that day, and a little over a week later, protesters took to the front of City Hall to paint "Defund the police" on the street.

Specifics about the mayor's June plan remain evasive, though in late July, San Francisco's Human Rights Commission released an initial outline of areas where the city's Black communities would like to see funds redistributed. Organizations receiving money could be working toward work-based learning programs, mental health services, after-school programs for Black children and subsidies for Black home ownership, according to the Chronicle.

"This is only the first step in a long process to bring resources and accountability to our community that has for decades been undeserved, underrepresented and ignored," Breed said.

Scott noted it was going to be "uncomfortable" to lose funding for the department, but was optimistic about the eventual outcome, he told the Chronicle.

"I think if we look at the bigger picture and envision what this is designed to do — if it's successful, we're going to be better off."

Oakland

On Tuesday evening, Oakland officials approved the formation of a new public safety task force that would move the city closer to defunding the police department's budget by 50%, or nearly \$150 million. It's a striking measure that would be implemented over the next two years through recommendations from the Reimagining Public Safety Task Force, which proposes that the city invests in various community resources in lieu of police responders.

Following a unanimous 8-0 vote by City Council, the resolution aims to increase citywide safety by providing alternatives to 911 calls. Comprised of a membership of 19 residents including at least two youths, the task force will work to reconstruct the city's public safety system by creating a plan that will drastically shift funding "from enforcement and punishment to prevention and wellness" in the city's 2021-2023 budget, according to a report from the City of Oakland.

Formerly incarcerated individuals, survivors of police violence and their families, as well as others affected by violent crime will also represent the board.

"We are really going for a transformation," said Councilmember Loren Taylor, who later

joined the resolution introduced by Councilmember Nikki Fortunato Bas and the Defund the Police coalition.

The coalition represents a broad swath of local activist groups that have protested in the streets of Oakland for months at marches, car caravans and mural painting demonstrations as they pushed for the defunding of the department as well as the removal of police from Oakland schools. Both Taylor and Bas will serve as co-chairs of the task force.

This news came just a week after Oakland Mayor Libby Schaaf cast a tie-breaking vote that prevented further budget cuts to the department after \$14.3 million had been slashed earlier in June. The proposal, introduced by City Council President Rebecca Kaplan as well as Bas, was supported by more than one hundred public speakers during the nine-hour-long meeting, but Schaaf argued that the police budget had already seen significant cuts.

“As you’ve heard from our finance director and our chief of police, any further cuts, real cuts to the police department will require a significant reduction to our widely recognized inadequate 911 response, elimination of current police services and as well as further strain on what is well-documented as an understaffed police force, having the lowest officer police per crime staffing of any department in America,” Schaaf said of her decision at the time.

City Council agreed to discuss Bas and Taylor’s task force plan the following week, when it was approved and the conversation of police department budget cuts and reallocation continued.

“While there is still much work to be done, this is a win for the people of Oakland,” Cat Brooks, co-founder of the Anti-Police Terror Project, said in a statement. “We forced the so-called Equity Caucus to commit to defunding OPD by 50% and investing that money in areas that truly keep us safe like housing, mental health, healthcare, and youth programs.”

Once the nominated co-chairs are selected by Sept. 14, the task force will have five months to develop draft recommendations to present to the City Council by March 31, 2021. Councilmembers are expected to adopt changes to the budget by June 30.

Some of the social services that could see increased funding include housing and community development, “expanded and readily accessible” mental and physical healthcare, as well as employment, education and violence prevention programs. Council members also intend to seek input from existing public safety groups — among them the Community Policing Advisory Board, the Public Safety Services Oversight Commission and the Police Commission — to divert funding to other resources and identify solutions that will not involve armed police responders.

One example would be to hire trained, trauma-informed crisis responders and mediators that would respond in the event of a mental health crisis. This summer, the Coalition for Police Accountability will roll out a pilot program called Mobile Assistance Community Responders of Oakland, otherwise known as MACRO. Inspired by a similar program in Eugene, Oregon called Crisis Assistance Helping Out On The Streets, or CAHOOTS,

Oakland City Council voted in June to allocate \$1.85 million in funding for such a resource.

"I would hope, as every other police agency hopes, that things we have been the default for ... things that are really safety and mental health services, like homelessness, issues co-occurring with substance abuse and even juvenile delinquency, that there are other agencies and entities that step up to take those kind of calls so that we can focus more on the violent crime," interim Oakland police chief Susan Manheimer said during a July 16 press conference. "And I believe that our city is going to try and take this moment, optimize it, embrace it and get it right. What should we be as a business and what does our community want to see a different footprint for OPD on?"

Berkeley

While the rest of the country largely continues to debate the meaning of "defund the police," Berkeley is already moving forward with plans to drastically cut funding to the Berkeley PD. In early July, the Berkeley City Council immediately passed a budget to divert \$9.2 million from the police force following outcry from the community. Mayor Jesse Arreguín called the initial move a "down-payment" on the city's defunding effort.

"We may need to reduce the Police Department by 30% — it may be 60%, it may be 70%," he said at the time. "We don't have that number right now."

Two weeks later, Arreguín penned an op-ed in the San Francisco Chronicle regarding the matter, calling now "an important opportunity to innovate."

"Despite my being a longtime social justice advocate, it was this movement, and this moment, that forced me to recognize that we cannot rely on dated and expensive policing models to build the future of public safety," he wrote. "The defund the police movement has forced me to recognize that we can no longer invest in one approach to safety at the expense of others, and that we must innovate to achieve true safety, equity and to resolve the most pressing problems of the 21st century."

The city then unveiled an ambitious plan to drastically readjust its funding of the police department, pledging to cut its \$72 million budget by 50% by next year, and reallocate some duties formerly carried out by police officers. Specifically, under the plan, traffic stops would be managed by a separate traffic enforcement agency to reduce instances of individuals pulled over because of their race, and some calls related to homelessness or mental health would instead be handled by social workers.

As Berkeley City Councilmember Sophie Hahn noted, most calls to Berkeley's 911 line are related to mental health, which are typically non-violent.

"Law enforcement is not the only way that we get people to understand the rules and abide by them," she added.

The plan has its critics. The details about how Berkeley will reach its lofty defunding objectives are, at this point, elusive, and some liken the East Bay city's goals to a "wish list" that could wind up being even pricier than the current way of doing things.

For its part, the Berkeley Police Department is taking a wait-and-see approach, and will begin considering whether some calls could be better responded to by other organizations within the city.

San Jose

Mayor Sam Liccardo called for a ban on using rubber bullets following the Floyd protests, but promptly rejected the idea of defunding despite some local residents calling for further reform. He released an announcement on the San Jose city website calling the notion "the wrong idea at the worst possible time."

Liccardo cited federal statistics showing that people of color are disproportionately the victims of violent crimes, though he didn't include any specifics of the findings.

"Defunding police will hurt the very people who have suffered the most from systemic racism in this nation," he continued. "Rich, white communities and businesses in suburban malls will just accelerate the hiring of private security guards."

Calls to defund nevertheless intensified later in June, when a private Facebook group of active and retired officers came to light, revealing racist posts. Santa Clara County Public Defender Sajid Khan said the posts represented "reprehensible, vicious views of these officers" and they demonstrated the "need to defund the police department."

Liccardo, however, still refused to entertain the idea. He responded in a now-deleted tweet, "And when teachers are caught saying vile things, do we defund the schools, or fire the teachers responsible?" He later clarified, adding, "If we're [seeking] to address systemic racism in all of our institutions, we'll need many more tools in our toolbox than merely to 'defund.'"

Pro-defund activists were again amplified in late July, when a video surfaced depicting a San Jose police officer kicking and dragging a woman in a parking lot with crying children in her car. Liccardo called the video "deeply disturbing," and promised "immediate change." San Jose Police Chief Eddie Garcia also commented, noting, "It doesn't look good."

Chief Garcia has broadly denied any systemic issues with policing among SJPD officers, saying that while "we have to get better," the department also "[has] empirical data that says there is no culture issue here."

Liccardo is seeking to rectify some issues, particularly related to how quickly the police department can release body-camera videos and how fast a city can discipline or fire a police officer. But as for defunding, it's still out of the question.

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[What will an affordable Berkeley look like in 2030?](#)

Berkeley's bold vision for the future of policing

What will city's reforms look like when you call 911 or are stopped for a traffic citation? Here are some scenarios.

By Ryan Kost | August 16, 2020

Illustrations by John Blanchard | Script by Alex K. Fong

Six years ago in Ferguson, Mo., almost to the day, police Officer Darren Wilson shot and killed Michael Brown Jr. A great unrest followed, first in Missouri, and then nationwide. On Nov. 24, 2014, a grand jury declined to indict Wilson. Brown's family released a statement shortly thereafter. They were "profoundly disappointed" with the verdict. And they asked supporters to "join with us in our campaign to ensure that every police officer working the streets in this country wears a body camera." This was back when Barack Obama was president; body cameras and bias training felt like substantive solutions to the intractable problem of police violence.

Six years later on May 25, George Floyd lost his breath and life as Minneapolis police Officer Derek Chauvin knelt on his neck for nearly nine minutes. Again a great unrest followed, first in Minneapolis, and then nationwide.

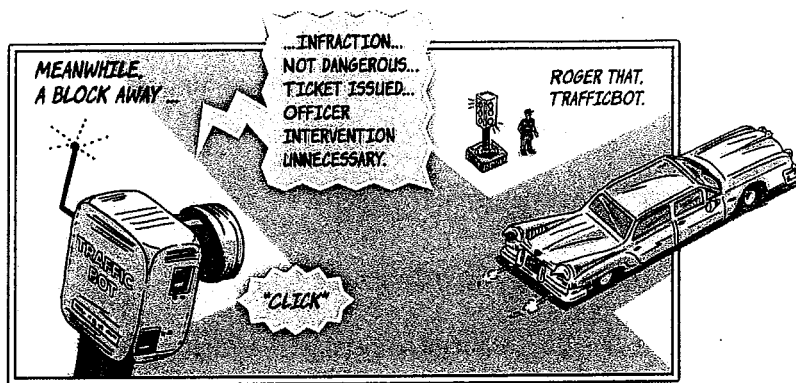
Only this time the officer was charged and arrested — and the demands went beyond body cameras and reform. Bearing witness was no longer enough. In the weeks following Floyd's death, protesters pushed to "defund" and "abolish" police departments nationwide. This, they said, was a time for a wholesale re-imagining of what public safety could look like.

Cities across the country are grappling with what this might mean. Locally, Berkeley has emerged as a potentially radical model for re-imagining the role of the police. In mid-July, City Council members voted to pass several public safety reforms in a single omnibus bill. Some grab headlines — a new traffic enforcement agency, separate from the Police Department, called BerkDOT; and a new network of first responders. Others are less flashy but no less integral to the overall vision — a deep dive into public safety data and significant budget reductions.

These reforms are years away. The council has committed to gathering extensive public input. Still, Ben Bartlett, one of eight Berkeley City Council members, calls this "a titanicly different conversation" or "titanic stuff."

"When you're trying to do something unprecedented, there's no precedent for it."

This vision faces major barriers — a city budget decimated by a global pandemic, a police association protective of the bureau's budget and a tangle of municipal, state and federal rulemaking, just to name a few. But, in the spirit of the Throughline, we asked city leaders, advocates and experts to imagine a future (10, 15, 20 years from now) should Berkeley make good on these promises. They didn't offer much in the way of the fantastical. Reform, instead, was a matter of practical steps that might, one day, result in new futures. Here are some scenarios.



What might a traffic stop look like?

There is a future without traffic stops. This is a future without humans at the wheel of most vehicles — a future in which we can't speed, run a red light or drive drunk. This is a future in which self-driving cars will shuffle us around using advanced artificial intelligence to navigate the road.

None of this is that far away. Self-driving vehicles could be commercially available in a decade and ubiquitous not long after that. “As a Black man, I can't wait for that day,” Bartlett says. After all, in study after study, Black and brown drivers are stopped and searched more often during routine traffic patrols.

So what about in the meantime? BerkDOT and automated enforcement offer one future:

Berkeley decides to focus on the most critical threats to public safety, rather than minor traffic infractions. So there are speed and red-light cameras up on high-injury streets throughout the city. If you break the law, you get a ticket in the mail, no bias involved. (The council has also moved toward a restorative justice approach. Rather than issuing fines, which can be regressive and hit lower-income earners harder, the city requires community service as restitution.)

But this doesn't happen often. Most of the time you're a good driver. One night, though, your taillight is out. A BerkDOT officer — unsworn, unarmed and separate from the Police Department — notices and pulls you over. This won't result in a pretextual vehicle search. It's simply a matter of awareness.

“You can boil so much of this down to the idea that not every first response requires a first responder in the ways that we're used to thinking about them,” says City Council member Rigel Robinson, who helped propose BerkDOT. “Not every call merits an armed reaction.”

The interaction goes smoothly. The official tells you about your taillight and issues a “fix-it” ticket. A week later you mail the department proof of the repaired light and avoid any fine.

“The basic idea would be that we would essentially separate most traffic enforcement activities from the police,” says Ben Gerhardstein, a member of the coordinating committee for Walk Bike Berkeley. (The group lobbied for the new department.) “A traffic stop would be a traffic stop. It wouldn't be peering into somebody's past, or an opportunity to get them. The point would be creating a safe street environment.”

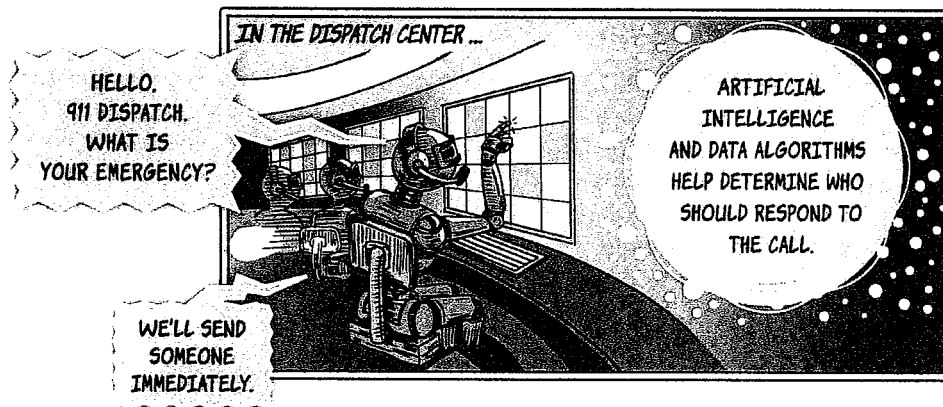
“It can be a national model for how we shift traffic enforcement outside of police enforcement,” says Mayor Jesse Arreguin.

Back to today: Few cities release data about how their police officers spend their time. A recent analysis by the New York Times shows officers in Sacramento have spent nearly 20% of their time this year responding to traffic incidents. Seattle officers spent 15% percent of their time on traffic calls.

There has been some resistance to BerkDOT — drunk drivers, for instance, are a central concern. Mothers Against Drunk Driving has come out against it, arguing it takes significant training to be able to identify impaired driving. Proponents, like Gerhardstein, acknowledge this. “DUI enforcement scenarios are one that we’re going to have to be really careful about.”

And then there are concerns about unarmed officials handling these incidents. However, one recent and comprehensive study published in the Michigan Law Review examined thousands of stops over 10 years in more than 200 Florida agencies and found that “the rate for an assault against officers (whether it results in injury or not) was only 1 in every 6,959 stops.” Serious injury was 1 in every 361,111 stops.

Still, say Robinson, Bartlett, Gerhardstein and Arreguin, armed officers could be on call for the most extreme cases.



What happens when you call 911?

A family member is struggling with mental illness and you can’t help — or you see somebody on the street who needs assistance. You call 911. Emergency dispatch has been moved out of the Berkeley Police Department and is now under the city’s Fire Department. Of course, you don’t notice.

You talk to an operator as you describe your emergency. Or maybe you tap a button on your watch or phone. A combination of algorithms and artificial intelligence go to work. Using historical data and predictive models, the operator quickly assembles a Specialized Care Unit.

“One of the things we passed was a deep, deep analysis of call-and-response data,” Bartlett says. “The whole experience of dispatch is going to have to be upgraded. It’s going to have to become smarter. There are too many inputs for that person to figure out and respond to fast enough.”

This care unit might include emergency medical technicians, social workers, psychologists, firefighters — or, in very specific instances, armed officers. These individuals will have to be culturally competent, too, able to relate to the communities they serve. “Too often, we have the

square peg, round hole issue ... you're going to need that (cultural competence) because the people who are most down and out are Black people and brown people."

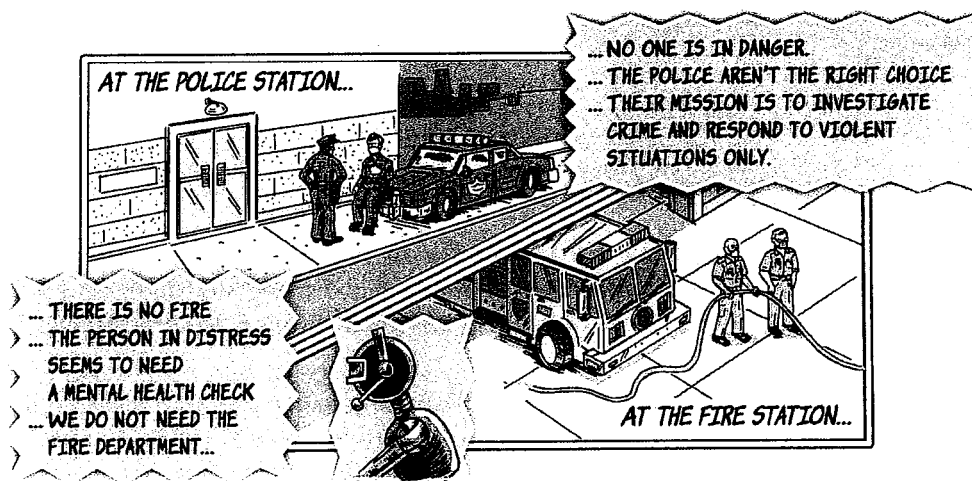
Based on an exhaustive study of previous calls, and the input from this call, the algorithm offers the dispatcher a combination of a social worker, psychologist and EMT. They put the call through and make sure that the group includes somebody who can connect with the person in need on a cultural and lingual level. Those same algorithms would also help calibrate staffing levels.

"So much of the heart of these issues is really about triage," Robinson says. "Right now cities aren't great at that."

This group knows that if the situation turns violent, a police officer is on call. But that doesn't happen. Instead, they are able to use a variety of best practices to calm the situation and offer access to wide-ranging social services.

Back to today: According to Mayor Arreguin, around 40% of calls to the city's Police Department are related to "incidents around mental health and homelessness." As a result, "increasingly our police are social workers." This, he says, isn't an effective use of their time. Instead the city should focus on "the programs and services that people need."

Data is a key piece of all of this by helping to inform dispatch needs and identify potential biases in policing. "We dramatically overestimate how much technology we use today in gauging our response" to crime, says John Roman, senior fellow for NORC, formerly the National Opinion Research Center, a nonpartisan research organization at the University of Chicago. "I think we're all seen too many TV shows about how police police ... and our basic understanding of what they do and what their job entails doesn't match reality."



What would police officers do?

Police no longer patrol city streets looking for expired tags and broken taillights. They no longer spend time investigating noncriminal traffic incidents. They no longer spend time responding to calls about mental illness or homelessness.

“So much of their time is spent on social policing, responding to people in crisis, roving and looking for the weakest links, and the weakest links are people who are unable to get their taillight fixed,” Bartlett says. “Essentially, the vision for policing in Berkeley — and hopefully the rest of the country — is one of an elite cadre of licensed professional investigators who solve crimes.”

OPTIMISM RATING

Hopeful: These law enforcement reforms are years away, but Berkeley is committed to change and setting the stage for what could be a vanguard program.

Rather than the long list of responsibilities police shoulder now, Berkeley officers would be tasked mainly with detective work, responding to violent incidents and acting as backup for Specialized Care Units. “They wouldn’t feel like an occupying army, and they wouldn’t feel like they’re stuck in the dregs,” Bartlett says. “I think it’ll lead to a happier force and better outcomes for the community.”

The police force would also function as a preventive presence — “a force mainly composed of people who are trying to solve problems before they start,” says Roman. This wouldn’t mean over-policing of certain demographics. Instead they would partner with community-based social workers to build relationships with the communities they serve.

“They have to be redirected to help people in a new way,” Bartlett says. “Otherwise the government itself will lack legitimacy.”

Back to today: Berkeley does not yet have public data around how its police officers spend their time — though that will come as part of the upcoming deep dive into public safety statistics. In Sacramento, however, noncriminal, traffic, medical and proactive incidents have, so far this year, accounted for 80% of how officers spend their time. Violent crime accounted for 4%.

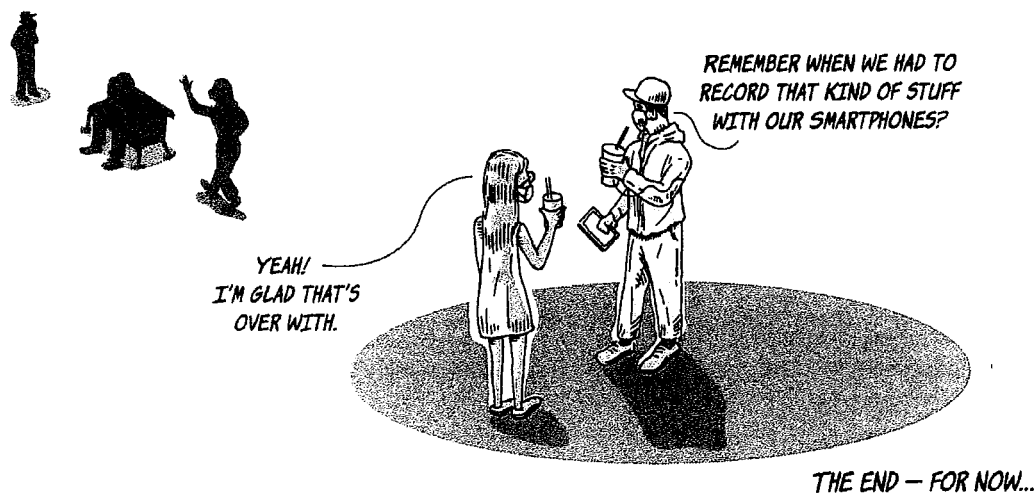


There is so much that could go wrong before any of this goes right — the budgets and unions and bureaucratic red tape.

James Burch, the policy director of the Oakland Anti Police-Terror Project, looks to a broader and fuller social safety net — one that invests in housing and mental health and crisis intervention, so that calling a public safety hotline isn't necessary to begin with. "Defunding the police," he says, means increasing funding to any number of community-focused organizations. This in itself may have the potential to reduce the need for policing. A 2017 study out of New York University estimated that "every 10 additional organizations focusing on crime and community life in a city with 100,000 residents leads to a 9% reduction in the murder rate, a 6% reduction in the violent crime rate, and a 4% reduction in the property crime rate."

Knowing this, Burch rejects the "urge to take our police force and imagine it in the future." Let's "step back from what our police is currently like," Burch says. "We can imagine a different course for everything."

The course the Berkeley City Council has chosen will go too far for some and not far enough for others. Still, it offers a course nonetheless, a course full of both uncertainty and hope.



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<https://www.sandiegouniontribune.com/news/courts/story/2020-08-29/murder-charge-of-ex-san-diego-deputy-first-in-state-under-new-law>

The San Diego Union-Tribune

Murder charge of ex-San Diego County sheriff's deputy first in state under new law

The case against Aaron Russell could be the first test of how the state's new use of force law is applied

By Greg Moran

Aug. 29, 2020 4 PM

When San Diego County District Attorney Summer Stephan announced last month that former sheriff's Deputy Aaron Russell would face a murder charge for the fatal shooting of a man in May, it wasn't just the first time a law enforcement officer in the county had ever faced such a charge.

The Russell case also marks the first time a law enforcement officer has been charged in California under a new state law that went into effect Jan. 1 that changed the legal standard regulating when police can use deadly force.

As a result, Russell's case — if it goes to trial — could be the first test of that new law, AB 392, that was authored by San Diego Assemblywoman Shirley Weber.

Among other things, the law changed the standard for when police can use deadly force from when "reasonable" to when "necessary" to prevent imminent and serious injury or death.

Yet legal experts said what exactly that change means — and how lawyers will argue about it, judges interpret it and juries apply it — still has to be determined, likely in courts. Already one police department is being sued by the American Civil Liberties Union over how that department is training officers on what the new law means.

Nicholas Bils was killed May 1 after he slipped out of a pair of handcuffs and escaped from a state park ranger's car just outside the downtown Central Jail. The 36-year-old had been arrested earlier that day for allegedly threatening a ranger with a golf club at Old Town San Diego State Park.

Prosecutors say Russell, a 23-year-old deputy assigned to work in the jail, fired five shots at Bils, who was unarmed and running away from Russell, a second deputy and two park rangers. In deciding to charge Russell, prosecutors noted that no other law enforcement officer pulled a gun.

Stephan said the unprecedented decision to charge Russell with murder was a result of analyzing his actions under the new legal standard of AB 392.

Russell has pleaded not guilty to second-degree murder. His attorney Richard Pinckard declined to comment this week, but has said previously that "significant defenses" would be raised as the case moves forward.

In an earlier statement after Russell's July 14 arraignment, Pinckard had pointed to a 1998 U.S. Supreme Court case known as *Graham v. Connor* which largely established the legal concept that use of force by police should be judged under the "reasonable officer on the scene" standard.

Ed Obayashi, a former police officer and deputy public defender in San Diego said. Pinckard is correct. Obayashi is now is a nationally recognized use-of-force expert and advises numerous law enforcement agencies in the state.

"The bottom line, whether he is convicted or not, is still going to hinge on whether his actions or the shooting was reasonable under the circumstances," he said. "And reasonable means necessary — legally they mean the same thing."

Not all agree, however. Adrienna Wong, a lawyer with the ACLU of Southern California, said that it is clear that the law did change the standard for using force.

"Overall, the standard has changed from reasonable to necessary," she said.

She pointed to analyses by the state Legislative Analyst and the statements made when Gov. Gavin Newsom signed the bill into law as evidence that the Legislature intended to make a more exacting standard for police using force.

Even given that, Wong said, the ACLU has found not all agencies agree.

In August the group filed a lawsuit against the Pomona Police Department, contending that the department is undermining the law by continuing to instruct and train its officers "that AB 392 did not change the legal standard for police officers's use of force," according to the suit.

The lawsuit says that the Peace Officers Research Association of California, or PORAC, had fought a rear-guard action against the legislation and told departments like Pomona that the law had not substantively changed.

The suit seeks an injunction that among other things would ban the department from using any resources, like money or employee time, to tell or train officers that the new law does not establish a "necessary" standard for use of deadly force.

Brian Marvel, the president of PORAC, which is discussed in the suit but is not a named defendant, said in an email that the bill did, indeed "change the law."

However, Marvel also echoed Obayashi's position by noting "necessity is determined based on an objectively reasonable officer."

It is a fine distinction, but one that may have to be hashed out and settled in court — perhaps in Russell's case.

"It all depends on whether a judge or jury takes that word that is there now and says, it is meant to heighten the burden on an officer," said Robert Weisberg, a law professor and faculty co-director of the Criminal Justice Center at Stanford University.

Eugene Iredale, a prominent San Diego civil rights attorney who is representing the Bills family, said that the new law is clear that the standard for using deadly force is raised, and that should not be an issue.

Both he and Weisberg pointed to another element of the law they said strengthens the prosecution's case against Russell. They noted that the law tightened the circumstances for when police can shoot at someone who is escaping.

Previously, state law said deadly force could be used only when trying to apprehend a fleeing felon. The law now says deadly force can be used in that situation only to stop a person suspected of committing a felony that "threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended."

That change made state law track a second 1985 U.S. Supreme Court decision known as *Tennessee v. Garner*, in which the court ruled police can only use deadly force on someone fleeing if there is the threat of serious injury or death. But the court did not require states to adopt that standard, Weisberg said, and for years California did not.

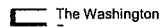
Weber's bill now brings state criminal law into accord with that ruling, Weisberg said. With that in the law, Russell would also have to show he believed the unarmed Bills was "exhibiting a clear likelihood of violence against human beings," he said.

Iredale praised Weber's bill but also said that, based on the case outlined so far, "with or without that statute, this case would have been charged."

In an affidavit for the arrest warrant for Russell, a DA investigator wrote that Russell and a second deputy were across the street from the jail when they saw one of Bills' arms reaching out the window of a California State Park ranger's Ford Crown Victoria as it approached the vehicle gate to the jail.

Bils was able to get out of the vehicle and began running up Front Street. Russell, holding his lunch tote, a water bottle in one hand and a COVID-19 mask in the other, chased him as he ran toward B Street. He transferred the mask to his left hand with the other items and unholstered his weapon with his right.

He was 15 to 20 feet away from Bils when he opened fire, the affidavit said. An autopsy report said Bils was shot at least four times.



Retropolis

There's a reason it's hard to discipline police. It starts with a bill of rights 47 years ago.

By Rebecca Tan
August 29

On a Thursday afternoon in March 1973, 50 uniformed officers filed into a red-brick legislative building in the Maryland state capital, armed with stories of being wrongfully disciplined by highhanded police chiefs, gripes of low morale, and threats for lawmakers who didn't agree to help them.

At stake was the "Law Enforcement Officers Bill of Rights" — a first-in-the-nation law that codified workplace protections for police officers far beyond those afforded to other government employees. They included giving officers a formal waiting period before they had to cooperate with internal inquiries into police conduct, scrubbing records of complaints brought against officers after a certain period, and ensuring that only fellow officers — not civilians — could investigate them.

It was not a controversial bill at the time, lawmakers say. But its impact would be profound.

Within four years, a Howard County police chief abandoned his call for public disciplinary hearings, citing the new law. A court ruled that an officer who was fired after using excessive force had to be reinstated and given back pay. And in 1977, a human relations commission in Prince George's County was told it could not investigate police brutality allegations — a decision the county's only Black council member at the time called a "slap in the face."

For more than four decades, critics say, the Law Enforcement Officers' Bill of Rights has been one of the biggest obstructions to police accountability, hindering investigations and shielding misconduct from public scrutiny. Fifteen other states followed Maryland in adopting a police bill of rights, including Wisconsin, where the police shooting of Jacob Blake this month has sparked protests, during which two more people were shot.

But Maryland's law goes the furthest in protecting officers, said Sam Walker, a professor of criminal justice at the University of Nebraska Omaha. While other states allow officers involved in an incident to wait 48 hours or so before they have to cooperate with internal investigators, Maryland lets officers wait five days before being interrogated.

When mayors or police chiefs have wanted to reform their departments, this law has stood in their way.

In 2015, then-Baltimore Mayor Stephanie Rawlings-Blake (D) explicitly blamed the police bill of rights for blocking the investigation into the death of 25-year-old Freddie Gray, who suffered a spinal cord injury in police custody. Baltimore and Montgomery County have created civilian review boards for their police departments, but police accountability advocates call them toothless because they cannot interrogate officers or request disciplinary action.

Gray's death prompted some changes to the law, but the Maryland General Assembly, under pressure from the police union, balked at all the changes advocates sought. Now, the killing of George Floyd in Minneapolis has launched a new effort in Annapolis, with some lawmakers calling for the bill of rights to be abolished. On Thursday, members of the House's police accountability work group publicly questioned whether there is a need for the law, warning dubious police chiefs and sheriffs that "change is a-comin."

There is some precedent. In June, over strong objections from police unions, New York state repealed a law that had kept police disciplinary records secret since 1976. But Maryland union leaders say the laws protect police officers' right to due process while they perform difficult and dangerous jobs.

After the Baltimore City police commissioner indicated to officials in June that he would support amending the law, Michael Davey, an attorney for the Maryland Fraternal Order of Police, countered that problems in the department were due to "mismanagement and incompetency," not the bill of rights.

No such acrimony marked the legislation's quiet entry into history books 47 years ago. As uniformed officers testified in Annapolis that winter day, "no delegates spoke out against the bill and no witnesses appeared to oppose it," The Baltimore Sun reported.

The following year, the law enforcement officers' bill of rights unanimously passed both chambers of the General Assembly.

'We're giving them everything'

Police influence soared in the United States in the 1970s, historians say. Crime rates were spiking and President Richard M. Nixon had just been elected after a campaign that promised law and order. Elected officials were reluctant to appear weak on crime.

"There was the sense that criminal justice was too lax, that we were coddling criminals," said Paul Butler, a Georgetown University law professor. "That's the atmosphere in 1974."

J. Joseph Curran Jr., a Democrat and former Maryland attorney general, in the 1970s chaired the state senate's Judicial Proceedings Committee, which reviewed the police bill of rights. The law, he remembered, "was not the subject of intense debate." Bills on gun control and the death penalty divided senators, but not police rights.

"I sensed that it was intended by the police union to give the officer an opportunity to have his position understood, recognizing that being a policeman then and now is a very difficult job," said Curran, now 90 and the father-in-law of former Maryland governor Martin O'Malley (D). "I don't believe it was ever intended to prevent examination of some misconduct."

The bill was introduced by delegates from Baltimore on behalf of the city's police union. In the 1970s, such unions had emerged as a major force across the country — a response to poor labor conditions, the anti-police sentiments of the civil rights movement and decisions like the 1966 Supreme Court case *Miranda v. Arizona*, which made it illegal for police to question suspects before informing them of their constitutional rights.

News articles from that era describe an unpopular but powerful Baltimore police commissioner, Donald Pomerleau, who willfully fired members of the rank-and-file, including 55 officers who participated in a 1974 police strike. Low-ranking officers reported being unnecessarily investigated, subjected to lie detector tests and accosted at their homes by investigators. Thomas A. Rapanotti, head of the city's police union, said officers had "no rights for themselves, no defense."

Police told lawmakers they needed legal protections to keep their jobs and fight crime, and warned that those who blocked the bill would suffer at the polls. After the bill was approved, police unions continued pushing quietly for amendments that strengthened it. For years they faced no opposition.

"There was no organized force against them," said Walker, the University of Nebraska professor. "No group that said, 'Hey, we're giving them everything.'"

A 'slap in the face'

One of the few elected officials who publicly criticized the law in the 1970s was Floyd E. Wilson Jr., the first African American council member in Prince George's County.

In 1977, following a rash of police violence in Prince George's, state legislators amended the bill of rights to explicitly block the county's human relations commission from accessing internal police documents or investigating misconduct. While most council members accepted the state's decision, Wilson was quoted in news articles calling it "a direct slap in the face."

"The police cannot operate as some autonomous body," warned the freshman lawmaker. "This will create a whole lot of animosity, especially in the Black community."

Back then, the Prince George's police department was virtually all White, and misconduct was disproportionately committed against African American residents, remembered Wilson Jr., now 85. He believed the rule could allow police power to go unchecked.

"There was a different way [police] treated White and Black folks," he said. "They would put us in jail much quicker than they would ever put them away. ... And it was very obvious to me."

Wilson grew up in the segregated city of Lake Charles, La. As a college student at Dillard University in the 1950s, he said, he was driven to the police station by a White bus driver after he and other Black classmates decided to occupy seats beyond those labeled "For Colored Only." In 1973, after graduate school at Howard University, he was appointed to the council to replace an outgoing member and quickly became a vocal critic of the police department.

After his comments about the bill of rights were publicized, he was stopped by cruisers while driving home from the council's Upper Marlboro headquarters late one night, he said. The officers, who were White, insulted and heckled him, and then brought him back to the station. He wasn't released until then-Prince George's County Executive Winfield M. "Win" Kelly Jr. called the police chief and ordered him to let him go, his wife recalled.

"I was scared to death," Wilson Jr. said. Four decades later, he still remembers the feeling of sitting alone in the driver's seat on that dark, empty highway, seeing armed officers walk toward him. He continued to advocate against police brutality for the next 13 years — with limited success.

"It was very frustrating because other people treated me like, you know, [this problem] is not happening. It's all a figment of your imagination," he said.

Police misconduct has long been a blind spot for elected officials, said Butler, the Georgetown professor. Until recently, White lawmakers in even liberal jurisdictions strongly approved of special protections for police, he said, reflecting a deeper, nationwide chasm in the way White and Black communities see law enforcement. In the wake of Floyd's killing, and other deaths in police custody captured on video, that may be changing.

The scale of recent protests has been unprecedented, reaching from major cities to small-town America. Local and state officials are demanding changes including budget cuts, bans on chokeholds and other restrictions.

In Maryland, State Sen. Jill P. Carter (D-Baltimore City) is leading an effort to abolish the police bill of rights. Carter said she was told by senior legislators in the past that there is an informal understanding with police unions that the bill of rights is not to be touched. A bill she

introduced in 2015 to eliminate the waiting period before officers have to cooperate with investigators never advanced out of committee.

“The legislature has refused to step up and govern [the police],” Carter said in an interview. “We’ve let them tell us what we can and cannot do.”

Wilson says Carter’s efforts feel bittersweet. The same problems he struggled against in 1977 are still being fought in 2020.

Sitting in his home in Bowie one recent afternoon, he went through a stack of old campaign pamphlets, yellowed photos and copies of news articles detailing the passage of the police bill of rights. He squinted at the words, trying to remember what exactly he had said and done — and whether it had been enough.


Read more Retropolis:

‘When the looting starts, the shooting starts’: A Miami police chief’s notorious 1967 warning

Trump’s warning that ‘vicious dogs’ would attack protesters conjured centuries of racial terror

The Klan’s vicious attack on Black protesters in Florida 60 years ago

Rebecca Tan

Rebecca Tan is a reporter working on the local desk in D.C. She previously reported on foreign policy and international affairs for The Post and Vox.com. Follow 

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Berkeleyside

CRIME & SAFETY

BREAKING

Berkeley police release video of officer shooting at vehicle after robbery

A Berkeley police officer fired her weapon at the vehicle of several people who had just stolen items from a CVS pharmacy in July, according to police and new video recordings released by the department Tuesday evening.

By Emilie Raguso, Sept. 1, 2020, 7:06 p.m.

A Berkeley police officer fired her gun at the car of several people who had just stolen items from a CVS pharmacy in July, according to police and new video recordings released by the department Tuesday evening in response to a Berkeleyside Public Records Act request.

Cellphone video shows the officer getting out of her vehicle July 30 with her gun drawn and trying to detain a driver and several people with him. The episode had started as a shoplifting incident but became a robbery after a struggle with store staff, police said. The driver ultimately fled the scene as the officer fired her gun at his car, the video shows.

The officer — identified by BPD on Tuesday as Cheri Miller — appeared to fire at the driver's front wheel as the motorist drove past her, according to the video. No injuries were reported in connection with the gunfire, which was BPD's first shooting in eight years. Miller, who has worked at BPD for 22 months, is on administrative leave pending the outcome of the department's investigation.

BPD ultimately found the alleged driver from the incident and identified him as 19-year-old Brandon Owens of Concord. On Aug. 7, the Alameda County district attorney's office charged Owens with robbery. He is no longer in custody, according to court records online. Owens is scheduled for arraignment Oct. 5.

Police said they have not identified anyone else who was in the car.

BPD's video, which was released Tuesday just before 6 p.m., includes footage from Miller's body camera, store surveillance video and cellphone video from the bystander.

It's the first time since Berkeley police began wearing body cameras about two years ago that the department has released this type of footage. Assembly Bill 748, which became law in 2019, requires law enforcement agencies to release bodycam footage from critical incidents within 45 days as long as that footage would not substantially impact an ongoing investigation.

On Tuesday, BPD said Miller had been patrolling in the North Shattuck area not far from CVS, at 1451 Shattuck Ave. (near Rose Street), just before 9:20 p.m. when the robbery took place. She heard "the disturbance from the curb at the nearby Safeway" and radioed for backup before driving to the CVS parking lot, according to BPD. She could see store staff trying to stop the culprits, according to police.

Just before Miller arrived, according to the videos released Tuesday, several people in masks ran out of the CVS with stolen goods, then struggled over a shopping cart with a store employee who tried to stop them. The group threw some of the items into

their car as a bystander filmed them, according to the recordings.

Miller arrived moments later with her lights and siren on and parked behind the car so the driver could not leave. She got out of her vehicle with her gun drawn and told the driver, who was standing outside of his car, to show her his hands. Miller ultimately ordered the man to get into his vehicle after he briefly walked away from her to get his keys.

“Get in?” he asked, confused.

“Yes,” Miller answered.

“Are you sure?” he asked.

As he got into the driver’s seat, Miller immediately ordered the man to put his keys on top of the car and keep his hands where she could see them. In the video, which is crisp but was shot from a distance, he appears to put something on top of the vehicle. But then, as Miller backed away slightly, the driver started his car and ignored Miller’s orders to turn it off. He then began to drive away, according to the recording.

“Turn the car off now,” Miller told the man repeatedly.

“I’m trying to,” he said, as he continued to turn the wheel, in an apparent attempt to exit the area, according to the video.

Miller yelled at the man to turn off the car, and a female voice inside the vehicle can be heard asking, “What are you doing?” as the driver continued maneuvering the vehicle out of its parking space.

“You want to turn it off for me? I can’t do it!” the driver shouted, according to the footage. He then accelerated, tires squealing. As the driver passed Miller, she turned her gun away from him and aimed it toward his car wheel, firing three times.

The case is being investigated by BPD’s Homicide Detail and Internal Affairs officers. The district attorney’s office was also notified of the incident, in line with city protocol.

Officer Byron White, BPD spokesman, said the investigation is ongoing so he could not share any additional details Tuesday.

“We’re releasing this for transparency and so people can have an idea about what happened that evening,” he said.

Emilie Raguso is Berkeleyside’s senior editor of news. Email: emilie@berkeleyside.com. Twitter: [emraguso](https://twitter.com/emraguso).

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Lori Droste
Councilmember, District 8

Action Calendar
July 12, 2022
(Continued from May 24, 2022)

To: Honorable Mayor and Members of the City Council

From: Councilmembers Lori Droste and Terry Taplin

Subject: Revisions to Section 311.6 *Warrantless Searches of Individuals on Supervised Release Search Conditions* of the Berkeley Police Department Law Enforcement Services Manual

Recommendation

Revise Section 311.6 *Warrantless Searches of Individuals on Supervised Release Search Conditions* of the Berkeley Police Department (BPD) Law Enforcement Services Manual to enable officers of the Berkeley Police Department to conduct detentions and warrantless searches individuals on parole/probation consistent with and supportive of the provisions in the probationer's/parolee's release conditions. The proposed revisions are shown in strikethrough and double-underline below:

Officers shall not detain and search a person on probation or parole solely because the officer is aware of that person's probation or parole status. The decision to detain a person and conduct a probation or parole search, or otherwise enforce probation or parole conditions, should be based upon articulable facts that support a need to enforce and/or confirm compliance with probation or parole conditions. ~~should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime.~~ In the conduct of all such detentions and searches, officers shall consciously avoid the application of bias, shall not use such detentions or searches as a means to harass or annoy, and shall not conduct such detentions and searches in a manner that targets or is discriminatory toward any protected class.

Policy Committee Recommendation

On April 18, 2022, the Public Safety Committee adopted the following action: M/S/C (Taplin/Wengraf) to send the item with a qualified positive recommendation, as revised by the committee and subject to legal review. Section 311.6 was revised to read: In accordance with

California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a legitimate law enforcement or rehabilitative purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion. In the conduct of all such detentions and searches, officers shall consciously avoid the application of bias, shall not use such detentions or searches as a means to harass or annoy, and shall not conduct such detentions and searches in a manner that targets or is discriminatory toward any protected class. Vote: All Ayes.

Problem or Summary Statement

Existing provisions of the BPD Law Enforcement Services Manual do not permit BPD officers to conduct warrantless searches and seizures of probationers/parolees in a manner that would be consistent with the conditions of their release. The restrictiveness of these provisions places those on probation/parole on nearly equal footing with respect to Fourth Amendment rights as those not on probation/parole. Not only is this circumstance at odds with the nature and purpose of probation/parole, it also prevents officers from effectively implementing the conditions of release imposed by sentencing judges. This limits officers' ability to proactively address recidivism and therefore presents a potentially significant risk to public safety.

Background

Probation/parole is a prison/jail sentence that is suspended on the condition that the offender follow certain prescribed rules and commit no further crimes. As part of these terms, individuals released on probation/parole are often required to waive all or a portion of their Fourth Amendment rights (which would otherwise normally guard against unreasonable search and seizure) in order to secure their release.

Fundamentally, these waivers reflect the fact that for a probationer/parolee, the full term of what would otherwise have been an incarceration is not yet complete. More practically, courts often impose these waivers as a condition of probation/parole because they recognize that both in general and for the individual in question, there may be a higher likelihood of recidivism or additional crimes, which must be guarded against.

When determining the extensiveness/intrusiveness of such Fourth Amendment waivers, sentencing justices will usually consider the nature and severity of the crime. Probation is typically issued with terms that allow for an individual's: 1) person; 2) property; 3) residence; and/or 4) vehicle to be searched at any time. Allowing only for a search of the person only would constitute a "one-way" search clause, whereas allowing for all four would constitute a "four-way" search clause. In extreme cases, an offender's terms may include these terms and an additional term allowing for the search of any/all of the individual's electronic devices, resulting in a "five-way" search clause. This is considered the most complete and intrusive of search terms.

Current Situation and Its Effects

Currently, an individual on probation or parole in Berkeley would be on nearly equal footing as someone who is not on probation or parole when it comes to search and seizure. This would, for example, mean that someone with a history of crimes involving firearms could not have their person or vehicle searched by BPD officers unless there were “articulable facts” that could be given to indicate that the individual had committed, was committing, or would commit a crime. In the case of a crime involving a firearm, such articulable facts would likely come only after a serious threat to public safety had already manifested. Although such risks would rightly not normally be sufficient to justify a search and seizure, in the case of probation and parole, courts typically recognize both a heightened risk and a diminution of Constitutional rights associated with a provisional release.

To give another particularly disturbing example, there is currently a sex offender residing in Berkeley whose crimes were so severe that the judge deemed that a “five-way” search clause was necessary in the offenders probation/parole conditions. Moreover, the court imposed a number of heightened restrictions on the individual in recognition of the seriousness of their offense, including prohibitions on the possession of images of children and on sleeping in any dwelling where children were present. Under current section 311 policies, BPD would generally not be permitted to search the individuals’ electronic devices to ensure that the judge’s order was being followed.

Criteria Considered

Effectiveness

This policy would apply only to searches and seizures involving individuals on probation or parole; the Fourth Amendment rights of others would not be affected. With regard to individuals on probation or parole, however, BPD would be able to more easily and effectively enforce the conditions of those individuals release, and guard against recidivism.

Fiscal Impacts

By potentially averting crimes, this policy change could serve to reduce policing costs since crime prevention is typically less costly than after-the-fact investigation, remediation, etc. Additionally, by serving to reduce recidivism, this policy could reduce overall costs to the criminal justice system.

Environmental Sustainability

The proposed policy would not result in any appreciable impacts with respect to environmental sustainability.

Equity

Regardless of whether this policy change is adopted, it will remain incumbent upon the Berkeley Police Department to respect the Fourth Amendment rights of individuals who are not on probation or parole; and for those on probation or parole, to limit such intrusions to those that are explicitly noted in the conditions of their release. BPD will also remain responsible for exercising its authority and responsibilities in a manner free of discrimination or bias. Since the practice of this revised policy would be no more or less likely than the existing policy to suffer from the effects of bias, this proposal is not anticipated to have any appreciable negative impacts on equity as it relates to BPD conduct. Additionally, impacts from crime tend to fall disproportionately on lower-income communities and people of color. If the fuller use of court-ordered avenues for search and seizure succeed in averting crimes, this proposed policy change could have the effect of promoting greater equity with respect to impacts from crime.

Attachments

Current *Berkeley Police Department Law Enforcement Services Manual*

Search and Seizure

311.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Berkeley Police Department personnel to consider when dealing with search and seizure issues.

311.2 POLICY

It is the policy of the Berkeley Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

311.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

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311.4 SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Officers should explain to the person being searched the reason for the search.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- (e) When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:
 - 1. Another officer or a supervisor should witness the search.
 - 2. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

311.5 ASKING IF A PERSON IS ON PROBATION OR PAROLE

In an effort to foster community trust, officers should not ask if a person is on probation or parole when a person has satisfactorily identified themselves, either verbally or by presenting identification documents.

Officers may determine probation or parole status through standard records checks conducted in the course of a traffic safety or investigative stop. Officers should only ask when necessary to:

- (a) Protect the safety of others, the person detained, or officers;
- (b) Further a specific law enforcement investigative purpose (for example, sorting out multiple computer returns on a common name);
- (c) To confirm probation and parole status subsequent to a records check.

If an officer needs to ask the question, "Are you on probation or parole?" the officer should do so while treating the person with dignity and respect, and being mindful that people may take offense at the question.

311.6 WARRANTLESS SEARCHES OF INDIVIDUALS ON SUPERVISED RELEASE SEARCH CONDITIONS

In accordance with California law, individuals on probation, parole, Post Release Community Supervision, or other supervised release status may be subject to warrantless search as a condition of their probation. Officers shall only conduct probation or parole searches to further a

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legitimate law enforcement purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion.

Officers shall not detain and search a person on probation or parole solely because the officer is aware of that person's probation or parole status. The decision to detain a person and conduct a probation or parole search, or otherwise enforce probation or parole conditions, should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime.

311.7 DOCUMENTATION

Officers shall document, via MDT disposition, Field Interview, Incident or Case Report, any search of a person, vehicle or location. Officers should consider documenting, as applicable, the following:

- Reason for the search
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
- What, if any, injuries or damage occurred
- All steps taken to secure property
- The results of the search, including a description of any property or contraband seized
- If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.