



Office of the City Manager

March 25, 2022

To: Honorable Mayor and Members of the City Council

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

Re: Supplemental Materials Related to March 8, 2022 Quarterly Update on Implementation of Fair and Impartial Policing recommendations

On March 8, 2022, Berkeley Police Department (BPD) provided the Mayor and City Council with a quarterly update on implementation of Fair and Impartial Policing (FIP) recommendations. There were several specific questions, as well as requests, for background materials or specific policies. This memo and attachments serve to provide that requested information related to the below recommendations:

*Task Force Recommendations:*

- Focusing the basis for traffic stops on safety and not just low-level offenses; and
- Minimize or de-emphasize as a lowest priority, stops for low-level offenses.

BPD developed the three-prong approach to traffic enforcement to provide officers with a framework for ensuring that traffic safety needs are the primary focus of stops. Please see the attached memo (Attachment A) prepared by the lead from our working group explaining the approach in more detail. This approach and my department-wide direction regarding focusing traffic enforcement on traffic safety will be formalized into a Special Order or Departmental Policy.

*Task Force Recommendation:*

- Refer amendments to existing BPD policy and the creation of an Early Intervention System (EIS) related to traffic, bike and pedestrian stops.

See attached draft BPD policy (Attachment B) for our Early Warning System (existing policy was titled Early Intervention System). We will be issuing this policy shortly with added language specifically related to traffic, bike and pedestrian stops. The below excerpt is from Policy 1041 and the added language is section (h) below. This language is intended to directly identify and address employee behavior that might indicate bias-based enforcement and clearly signal a commitment to the importance of fairness and impartiality in our law enforcement efforts.

### 1041.3 PROCEDURES

Employee behavior or performance that is subject to EWS review includes, but is not limited to:

- (a) Poor attendance and/or abusive use of leave;
- (b) Multiple formal sustained or not sustained complaints;
- (c) Multiple informal complaint inquiries;
- (d) Multiple use of force incidents;
- (e) Multiple obstructing/resisting arrest incidents;
- (f) Multiple vehicle collisions; and,
- (g) Substandard conduct/performance concerns observed by a superior officer.
- (h) Irregular demographic stop data on pedestrian, bike, and vehicle enforcement, while considering the factors of the assignment (geographical area of the city the officer is working, the specific detail/assignment, and the nature of enforcement).**

Task Force Recommendation:

- Adopt a policy to require written consent for all vehicle and residence searches and update the consent search form in alignment with best practice and community feedback.

See attached current BPD Policy (Attachment C) related to consent searches as well as the updated consent form. This policy update went into effect February 28, 2022.

Attachments

- A: Traffic Safety Working Group recommendations
- B: Policy 1041 – Early Warning System
- C: Policy 311 – Search and Seizure

cc: Paul Buddenhagen, Deputy City Manager  
LaTanya Bellow, Deputy City Manager  
Jen Louis, Interim Chief of Police  
Jenny Wong, City Auditor  
Mark Numainville, City Clerk  
Matthai Chakko, Assistant to the City Manager



Internal

# Berkeley Police Department Memorandum



**To:** Captain Rico Rolleri, Professional Standards Division

**From:** Sergeant Peter Lee, Audits and Inspections Sergeant

**Date:** January 18<sup>th</sup>, 2022

**Subject:** Traffic Safety Working Group

**Summary:**

Attached are the Traffic Safety Working Group recommendations developed towards implementing the Fair and Impartial Policing Task Force's recommendation on ***"focusing the basis for traffic stops on safety and not just low-level offenses."***

**Background:**

On February 23<sup>rd</sup>, 2021 the City Council referred recommendations from the Mayor's Fair and Impartial Policing (FIP) to the Berkeley Police Department for implementation. One of these recommendations was to "focus the basis for traffic stops on safety and not just low-level offenses." In order to address this recommendation, a working group consisting of various members of the Police Department with varying levels of experience was formed. The group consisted of a representative from every unit at the Police Department, a member of the Police Association leadership, and the Berkeley Transportation Division Manager, who is also a core staff member of the Berkeley Vision Zero Program. The working group met bi-weekly from the beginning of May until the task was completed in August. The following are members of this working group:

- Sgt. Peter Lee (Professional Standards Division)
- Sgt. Joseph Ledoux (Professional Standards Division)
- Ofc. Matt Yee (Operations Division - Community Service Bureau)
- Ofc. Corey Bold (Operations Division - Weekday patrol)
- Ofc. Benjamin Phelps (Operations Division - Weekend patrol)
- Ofc. Greg Michalczyk (Operations Division - Downtown Task Force)
- Ofc. Daniel Quezada (Investigations Division - Detective Division)
- Ofc. Nikos Kastmiller (Investigations Division - Traffic Bureau)
- Lt. Jen Tate (Investigations Division - Traffic Bureau)
- Sgt. Darren Kacalek (Berkeley Police Association)
- Farid Javandel (Berkeley Transportation Division)

**Implementation:**

On May 21<sup>st</sup> and June 9<sup>th</sup>, 2021 Interim Chief Louis provided the Department with written temporary direction on traffic enforcement. The Chief provided statistics, primary collision factors and directed officers to focus on those safety violations wherever they are observed. The working group viewed the Chief's direction regarding primary collision factors and built upon that information by looking further into Berkeley specific collision data as well the National Highway Traffic Safety Administration data concerning vehicle collisions. Additionally, the working group considered various other serious traffic



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safety violations observed, based on their professional experience and training, not just primary collision factors that emerged from the data snapshot in Berkeley. The working group determined that in addition to primary collision factors, other serious traffic safety violations exist that need to be focused on as an element to promoting a safe environment for pedestrians, bicyclists and vehicles travelling upon the roadways within the City of Berkeley.

The Working Group developed a three-prong approach that focuses on primary collision factors, community member reports and observations reported to the Berkeley Police Department and community caretaking. Community caretaking functions consider safety violations that aren't always noted as the primary collision factor but can be a significant contributing factor in serious collisions.

## Prong # 1 - Primary Collision Factors (Berkeley specific data)

Vehicle code violations resulting in severe and fatal collisions in Berkeley.

- Unsafe speed
- Pedestrian right-of-way at crosswalks
- Failure to yield for turns
- Red light violations
- Stop sign violations

## Prong # 2 – Community Reports

Responding to calls from community members.

- Possible DUI driver (car reportedly swerving)
- Driver that's fallen asleep at a red light
- A variety of unsafe driving incidents occurring
- CRIME involving vehicle
  - Hit and Run
  - Crime with get-away vehicle description

## Prong #3 – Community Caretaking

Examples of violations that are safety concerns but not necessarily PCFs

- Seatbelt violations
- Distracted driving (hands free law)
- DUI

Establishing the violations that applied to prong #3 was the primary focus of the working group. The importance of these safety violations is that several of these violations are not considered as *primary* collision factors in collision investigation reports. However, many primary collision factors are a direct result of the several of the violations listed in this section. The following are statistics and concerns that the working group considered in determining the above examples of violations for prong #3:

### Seatbelt Violations

- 47% of passenger vehicle occupants killed in the US in 2019 were unrestrained



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- Seatbelts can reduce the risk of fatal injuries by 60%  
<https://www.nhtsa.gov/risky-driving/seat-belts>

## Distracted Driving

- 2,841 lives lost in 2018 because of distracted driving
- 3,142 lives lost in 2019 because of distracted driving  
<https://www.nhtsa.gov/risky-driving/distracted-driving>  
<https://crashstats.nhtsa.dot.gov/Api/Public/Publication/813111>

## Driving Under the Influence/ NHTSA's 24 DUI cues

- 10,142 deaths were the result of someone DUI in 2019
- DUI was the PCF for 62 collisions in Berkeley from 2015 to 2021.
  - This caused 103 injured persons<https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813060>



## EARLY WARNING SYSTEM

### 1041.1 PURPOSE

The purpose of this Order is to establish policy and procedures for an informal performance review and intervention program, the “Early Warning System” (EWS). The program monitors employee performance that may be inconsistent with professional police conduct and cooperatively engages employees to resolve areas of concern. The goal of EWS is early identification of employee performance issues and correction of these issues through constructive counseling sessions rather than the formal disciplinary process.

### 1041.2 POLICY

All employees shall participate in the EWS program and comply with the guidelines set forth in this Order.

Participation in the EWS program shall not be deemed punitive, nor a formal disciplinary process.

- (a) Notwithstanding the initiation of the EWS process, the Department retains its right and responsibilities with regard to investigation of policy violation and enforcement of employee discipline.

### 1041.3 PROCEDURES

Employee behavior or performance that is subject to EWS review includes, but is not limited to:

- (a) Poor attendance and/or abusive use of leave;
- (b) Multiple formal sustained or not sustained complaints;
- (c) Multiple informal complaint inquiries;
- (d) Multiple use of force incidents;
- (e) Multiple obstructing/resisting arrest incidents;
- (f) Multiple vehicle collisions; and,
- (g) Substandard conduct/performance concerns observed by a superior officer.
- (h) Irregular demographic stop data on pedestrian, bike, and vehicle enforcement, while considering the factors of the assignment (geographical area of the city the officer is working, the specific detail/assignment, and the nature of enforcement).

The Racial and Identify Protection Act (RIPA) data will be available to supervisors in the form of an electronic data dashboard. This will provide supervisors and commanders with the ability to review stop data created by officers assigned under their span of control. The individual stop data for individual officers should be considered a personnel record as it may provide supervisory guidance for specific officer stop data, if necessary. The public release of any RIPA data will remain anonymized as previously agreed upon Meet and Confer with the Berkeley Police Association and provisions of Government Code 3300 et.al.

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Supervisors, commanders and managers shall monitor the activity of their subordinate employees to identify actual or perceived unprofessional behavior and/or substandard performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police via the Chain of Command.

Personnel assigned to the Internal Affairs Bureau (IAB) shall monitor all formal and informal allegations of employee misconduct received by their office for behavior or performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police.

Personnel assigned to the Support Services Division Report Review Detail shall forward to the Chief of Police copies of all reports pertaining to:

- (a) Obstruction/resisting arrests cases (i.e., Penal Code §§148, 69, etc.)

Administrative reports regarding use of force shall be forwarded to the Chief of Police as directed in Policy 300.

#### **1041.4 MANAGEMENT OF PROGRAM RECORDS**

The Office of the Chief of Police shall be responsible for aggregation and administrative management of information, data and records associated with the EWS program.

- (a) The administrative assistant assigned to the Office of the Chief of Police shall be responsible for preparing a quarterly report summarizing information and activities associated with the EWS program for use in administrative review.

Information, data and records associated with the EWS program are used for personnel purposes. Accordingly, they are confidential personnel files and not public records.

Documents, data and records shall be maintained by the Office of the Chief of Police for a period of two (2) years.

Access to EWS records shall be restricted to the supervisor, commander and/or manager involved in the monitoring of a particular employee, subject to the approval of the Chief of Police.

- (a) An individual employee may be granted access to EWS records that pertain to him/her.

#### **1041.5 ADMINISTRATIVE REVIEW BOARD**

The Chief of Police will convene a quarterly Review Board comprised of all Division Commanders to review program records to determine if initiation of the EWS Program is recommended.

Upon consideration of the Review Board's recommendation, the Chief of Police may direct an employee to participate in the EWS program.

#### **1041.6 INITIATION OF EWS PROGRAM**

Upon the direction of the Chief of Police, an informal counseling meeting will be held that may include:

- (a) The subject employee;



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- (b) The employee's supervisor;
- (c) An Internal Affairs Bureau sergeant;
- (d) The employee's Lieutenant; and,
- (e) The employee's Division Commander, who shall preside over the meeting.

Unless impractical, the counseling meeting shall be held during the employee's regularly scheduled working hours.

- (a) If the meeting cannot be scheduled during the employee's regularly scheduled working hours, personnel participating while off-duty shall be compensated with compensatory time (minimum time as may be authorized by the employee's MOU) or, with Division Commander approval, allowed to flex an equal amount of time within that same work week.

The subject employee may have one fellow employee accompany him/her to the counseling meeting.

- (a) The accompanying employee's presence is allowed to offer general support to the subject employee, not to be an active participant in the counseling meeting.

As in general supervisor counseling meetings, the employee shall be informed of the behavioral and/or performance concern(s) at issue, and he/she shall be allowed an opportunity to offer a response.

The subject employee may be given information regarding the City of Berkeley Employee Assistance Program.

No formal document will be generated referencing this meeting, and the meeting shall not be deemed a punitive or disciplinary proceeding against the employee. There shall be no permanent record of the meeting.



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## 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.

Officers seeking a consent search should obtain written consent on a *Berkeley Police Department Consent Search Form*, unless an officers safety or exigency issue exists. When either of the

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aforementioned exist, the officer shall obtain the consent on body worn camera (BWC) and document the reason in the MDT/incident/case report.

Whenever practicable, officers are encouraged to contact a supervisor to resolve questions regarding search and seizure issues prior to electing a course of action.

#### **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.

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#### **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 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.



# BERKELEY POLICE DEPARTMENT

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EMAIL: police@cityofberkeley.info

## CONSENT SEARCH FORM

Case: \_\_\_\_\_

I, \_\_\_\_\_ have been informed of my constitutional right not to have a search made of my person, residence, property, vehicle, and/or electronic device(s) hereinafter mentioned, without a search warrant and of my right to refuse to consent to such a search.

**Officer(s):**

of the Berkeley Police Department, and any other law enforcement agent, to conduct a complete search of the following:

	TO BE SEARCHED	PERSON'S INITIALS	DATE	TIME
PERSON				
RESIDENCE				
PROPERTY				
VEHICLE				
ELECTRONIC DEVICE				

I give this written permission to the above-named police officers voluntarily. No threats or promises of any kind have been made to me.

(Signed) \_\_\_\_\_

Officer \_\_\_\_\_

Witness \_\_\_\_\_