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Councilmember, District 4

CONSENT CALENDAR
April 11, 2023

To: Honorable Mayor and Members of the City Council

From: Councilmember Harrison (Author) and Vice Mayor Bartlett (Co-sponsor)

Subject: Referral \$100,000 to the June, 2023 Budget Process to Design a Comprehensive Berkeley Police Early Intervention and Risk Management System

RECOMMENDATION

Refer \$100,000 to the June, 2023 Budget Process to enter into a contract to design and assist with implementing a comprehensive Berkeley Police Department Early Intervention and Risk Management System to provide necessary data and help in implementing fair and impartial policing policies and public safety reimagining.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

A key outcome from the February 23, 2021 Council-approved “Report and Recommendations from Mayor’s Fair and Impartial Policing Working Group” was direction to the City Manager to “Implement an Early Intervention System (EIS) and a risk-management structure.”¹ Additionally, the “Reimagining Public Safety In Berkeley: Final Report and Implementation Plan” by the National Institute for Criminal Justice Reform recommended a comprehensive EIS.²

These systems, adopted successfully by neighboring jurisdictions, involve structured use of public safety data to inform goals and strategies and improve accountability and transparency. A well-structured EIS and risk management system offers the following benefits:

- Allows the department to commend personnel for positive performance.³ Officer morale and retention are thus improved. This can also help identify best practices

¹ “Report and Recommendations, Mayor’s Fair and Impartial Policing Working Group,” February 23, 2021, Mayor Jesse Arreguín and Councilmember Kate Harrison, <https://berkeleyca.gov/sites/default/files/documents/2021-02-23%20Special%20Item%2001%20Report%20and%20Recommendations.pdf>.

² National Institute for Criminal Justice Reform “Reimagining Public Safety In Berkeley: Final Report and Implementation Plan,” March 2022, https://berkeleyca.gov/sites/default/files/documents/BerkeleyReport_030722.pdf

³ Benefits and use of any system are dependent on design and inclusion/availability of data. For instance, benefits from assessing response times can only be realized if the system, as designed and functioning, has access to quality response time data.

to be shared and implemented throughout the department, leading to improved overall performance and outcomes.

- Promotes a culture of wellness by monitoring possible indicators of job-related stress and other risk factors. Data-informed proactiveness can improve de-escalation, communication, provide more resources for mental health support, or address other factors that may be contributing to officer stress and burnout.
- Allows assessment of trends by types of stops, parts of the city and by particular squads or teams.
- Mitigates risk and reduce litigation by evaluating patterns, trends or incidents in areas such as vehicle collisions, use of force, alleged misconduct, sustained misconduct, and other performance metrics and outcomes. Comparing crime types with personnel information (e.g., number of reported resisting, delaying, obstructing arrest offenses by person or squad) is another type of warning or risk management metric. Most importantly, this can help prevent incidents that could put community members, officers, and suspects at risk of harm or injury.
- Helps the City adjust, improve, or create policies, procedures, or training initiatives depending on an evaluation of risk and risk-based outcomes.
- Helps the Department identify any important underutilized or inaccessible data that reveals important and actionable trends.⁴ Insights about time of day or area of the city may be important when crafting a community-informed, precision-based, or problem-oriented public safety solution.
- Provides opportunities for regular risk management meetings with Department leadership to measure progress and reflect on whether deployment patterns and policing strategies and tactics are achieving desired outcomes.
- Build trust between law enforcement and the communities they serve by providing data and opportunities for regular conversations between the PAB, the community, the Council, City Management and the Department.

The expectation is that EIS and risk management systems can identify patterns of policing such as the arrest quotas alleged in 2022. The system would help identify officer, squad, or Department-wide outliers or patterns in stops, searches, and use of force and their outcomes, to examine the reasons for racial disparities, to provide educational interventions, and to take administrative action, as appropriate. A system would also be able to extract and create EIS/Performance Management fixed or custom reports.

The EIS would have role level security depending on the desired use and/or confidentiality of the data. Users would be identified by role/rank/assignment and rules

⁴ For example, the crime hub works well if a community member wants or needs to review reported crimes by type for a specific selection of blocks or search, filter, or contrast to other periods of time. However, the current hub displays broad classifications of crime such as “assault” and “robbery” but little helpful data regarding these offenses. An assault may be felony or misdemeanor, and a robbery may be everything from shoving a security guard on the way out of a store to an armed carjacking. The hub doesn’t offer an ability to easily examine these differences nor does the current version use additional filters such as day of week or time of day for reported offenses. It is also still difficult to export hub crime data into raw data that can be used for further data analysis.

associated with those variables allow or disallow functions and access to data as a result.

Data available to the public would be anonymized. Using anonymized and aggregate data, the Department could discuss data and trends regularly with the community, the Council, and the PAB in furtherance of community, Fair and Impartial Working Group and public safety reimagining goals. A fundamental finding of the City's reimagining process was that disparities are not merely the result of individuals, but systemic socioeconomic forces. Deep analysis enabled by a robust risk management system could help the City and community highlight and address community-level policy pressures that may be driving disparities.

BACKGROUND

Due to funding and time constraints, no comprehensive system as envisioned by the 2021 Council direction has yet been implemented in Berkeley. The Berkeley Police Department operates a less comprehensive "Early Warning System" (EWS) that was originally created in 2004 and revised in 2008. These early efforts consisted of supervisors, commanders and managers manually aggregating informal performance review and counseling intervention program information, and focused on:

- (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.

Since 2021, the Department has updated the Department's EWS policy (Policy 1041) to include monitoring stop data for individual officers. However, the system lacks automated data-driven systems to monitor officers' individual stop data by department management, instead relying on supervisor identification of issues and random quarterly audits of several officers' stop data, complaints, uses of force incidents and other factors.⁵

Thanks to Department and Council leadership, BPD maintains a rigorous data and transparency hub which has improved transparency. However, the current hub appears to be largely external facing, and it is unclear to what extent the system informs internal decision-making or accountability as part of the EWS. A Council report by the Department suggests that data streams flowing into the transparency hub are not

⁵ "Update on the Implementation of Fair and Impartial Policing Task Force Recommendations," Jennifer Louis, Interim Chief of Police, September 2022, <https://berkeleyca.gov/sites/default/files/documents/2022-09-20%20Item%2019%20Update%20on%20the%20Implementation.pdf>.

necessarily considered internally through the EWS. Rather, as discussed in detail below, reviews are done manually through audits.⁶

The Department announced in September 2022 that it was piloting a new precision and evidence-based policing data model. The real-time dashboard will track calls for service demands and route call data as part of a “feedback loop” between the Community Services Bureau and Patrol Watch Commanders to help reduce stops that studies have shown had minimal impact on public safety.⁷ The Department envisions improved accountability from this work, but it is unclear how it relates to the larger EIS concept and whether such additional work to develop the system is funded. This plan to define, track, and measure precision policing strategy and tactics is promising and there is great potential to integrate it to an EIS.

The 2021 State of California Racial and Identity Profiling Act (RIPA) report identifies two models of successful programs: the Phoenix and Seattle Police Departments. The report clarifies that an EIS system is “meant to be part of a larger performance management system designed to keep communities and officers safe” and to protect against racial and identity profiling.⁸ Effective systems identify at-risk behaviors *before* the need for disciplinary action, although they may ultimately include discipline. Key components are identification, accountability, and enforcement.

RIPA data and other potential data streams available to the department provides a long list of potential indicators that might be used to flag outliers, including not limited to:

- Stop, use of force, and warrantless search data that disparately impact people of color;
- Yield rates that are higher among White people than among people of color who are stopped;
- Deployment and policing strategies, policies, and patterns; and
- Racial and identity profiling allegations, sustained misconduct charges and other criteria.

The systems proposed by RIPA and other leaders in the field differ from what is mandated in current policy. The identification in the former is accomplished through data analysis across the department, whereas current policy leaves it to individual supervisors to flag individual subordinates for unprofessional conduct, putting much more onus on individual supervisors and making it potentially seem more personal.

As RIPA points out, early warning and risk management systems are not meant to be primarily a disciplinary system.

“To ensure officers do not feel that this system is a ‘gotcha’ system but rather something they should be invested in... training should include what the EIS captures and how the data will be

⁶ Id.

⁷ Id.

⁸ Racial and Identity Profiling Advisory (Ripa) Board Report, State of California Department of Justice, 2021, <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2021.pdf>.

interpreted, as well as the purpose of the data. Supervisors should be trained to understand their role in the accountability process and how this may alter their current responsibilities. Agencies must also clearly outline how EIS works, how and why it will be used, and what interventions will look like in their policies and protocols.”

Part of this accountability is consistent, regular follow-through. In addition, the Department needs to determine if such problematic behaviors are generalized throughout the department. For example, it may be that instead of a few outliers, racial disparities of stops, searches, and yield rates are seen throughout the department as a whole. In that case, interventions would include the monitoring and training of supervisors, or changes in policy. If interventions are not effective, disciplinary action may be necessary.

Furthermore, a National Institute of Justice study carried out in three cities found that EIS systems reduced citizen complaints and use of force incidents among officers subject to interventions.⁹ The cumulative conclusion drawn from these studies is that, to be effective, a system has to be well-constructed and include careful identification, accountability, and follow-up enforcement.

Statistical analysis of BPD data by members of the Mayor’s Fair and Impartial Working Group showed that between 2015 and 2020, Black people were stopped almost twice as often as Whites in circumstances that did not result in any enforcement action (i.e., citation or arrest). Among civilians who are stopped, Black people were searched more than twice as often as Whites.¹⁰ This is one of the most important indicators of racial disparities in stops since it suggests a potentially lower threshold for stopping Black people. A more robust EIS will allow the department to disaggregate this data to understand the source of these disparities. This does *not* mean that officers or groups of officers have done anything wrong, just that an effective EIS system would flag them for careful analysis to see what is driving apparent disparities. Most fundamentally, analysis can drive examination of the legality, benefits and consequences of different stop and search criteria and allow changes at the management and Council levels as disparate outcomes may be the result of policies or training gaps.

Overview of Budget Request

This budget referral would provide resources to hire a consultant to design and help implement a comprehensive system building on what the Mayor’s Fair and Impartial Working Group envisioned, but with a more comprehensive data-analytic capacity and an internal and external focus to enhance both transparency and the Department’s ability to safeguard the well-being of its employees as well as the public.

⁹ Samuel Walker; Geoffrey P. Alpert; Dennis J. Kenney, “Early Warning Systems: Responding to the Problem Police Officer, Research in Brief,” U.S. Department of Justice Office of Justice Programs, July 2001, <https://www.ojp.gov/library/publications/early-warning-systems-responding-problem-police-officer-research-brief>.

¹⁰ “Report and Recommendations From Mayor’s Fair and Impartial Policing Working Group,” February 23, 2021, p. 39.

It is in the public interest to refer funds to the June 2023 budget process to accelerate the implementation process of a comprehensive EIS system as envisioned by Council action in 2021 in response to the Mayor's Fair and Impartial Working Group Report.

Such systems have operated successfully in other localities for some time. Evaluation can be conducted and software programs can be developed with consultants to assist BPD in implementing an EIS.

To achieve a comprehensive and effective EIS system, the scope of consultant work would include:

1. **Evaluating** the current early warning system.
2. **Identifying and including stakeholders in system design:** determine who will be impacted by the new policy and involve them in the evaluation process.
3. **Collecting and analyzing data:** collect data on the existing EIS policy's implementation and effects, both intended and unintended. This could include feedback from stakeholders, data on program outcomes, and review of any relevant reports or studies.
4. **Assessing the existing policy's effectiveness:** Evaluate the policy against its intended goals and objectives and determine if it is achieving its desired outcomes from BPD, BPA, and community perspectives.
5. **Researching and comparing** current best or suggested practices.
6. **Recommending improvements:** Based on current best or suggested practices and/or the results of the evaluation, make recommendations for improvement, revision, or implementation of alternative policies. Provide examples of sample reports that could come from the system.
7. **Evaluating a proposed system's fairness:** Consider the impact of the new policy on different groups, including personnel as well as marginalized communities, and determine if the policy is equitable, fair, and just.
8. **Evaluating the cost and implementation of alternatives or improvements:** assess the available data and resources required to implement a revised/desired policy and system and identify costs.
9. **Communicating results:** share the results of the evaluation with stakeholders and decision-makers, and engage in open and transparent discussions about the implications of the findings. Model a process for regular strategic dialogue between the BPD, City Management, Legislators, the PAB and community leaders to review aggregate data, patterns and trends to evaluate policing policies and strategies.

10. Assist in Implementing changes: based on the results of the evaluation and recommendations, assist with implementation of any desired changes.

FISCAL IMPACTS OF RECOMMENDATION

It is estimated that consultant work to implement a comprehensive EIS and Risk Management System would cost \$100,000.

ENVIRONMENTAL SUSTAINABILITY

Not applicable.

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