BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE
SPECIAL MEETING

Thursday, May 8, 2025
12:30 PM

Cypress Room – 2180 Milvia Street, 1st Floor, Berkeley, CA 94704

Committee Members:

Councilmembers Rashi Kesarwani, Shoshana O'Keefe, and Brent Blackaby
Alternate: Mayor Adena Ishii

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. All Committee meetings are recorded.

Use this URL https://cityofberkeley-info.zoomgov.com/j/1612176798 to access the meeting remotely. To request to speak, use the "raise hand" function in Zoom. To join by phone: Dial **1-669-254-5252 or 1-833-568-8864 (Toll Free)** and Enter **Meeting ID: 161 217 6798.** To provide public comment, press *9 and wait to be recognized by the Chair. To submit a written communication for the Committee's consideration and inclusion in the public record, email policycommittee@berkeleyca.gov.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting, however, if you are feeling sick, please do not attend the meeting in person.

Pursuant to the City Council Rules of Procedure and State Law, the presiding officer may remove, or cause the removal of, an individual for disrupting the meeting. Prior to removing an individual, the presiding officer shall warn the individual that their behavior is disrupting the meeting and that their failure to cease their behavior may result in their removal. The presiding officer may then remove the individual if they do not promptly cease their disruptive behavior. "Disrupting" means engaging in behavior during a meeting of a legislative body that actually disrupts, disturbs, impedes, or renders infeasible the orderly conduct of the meeting and includes, but is not limited to, a failure to comply with reasonable and lawful regulations adopted by a legislative body, or engaging in behavior that constitutes use of force or a true threat of force.

California Government Code Section 84308 (Levine Act) Parties to a proceeding involving a license, permit, or other entitlement for use are required to disclose if they made contributions over $500 within the prior 12 months to any City employee or officer. Parties and participants with a financial interest are prohibited from making more than $500 in contributions to a decisionmaker for the 12 months after the final decision is rendered on the proceeding. The above contribution disclosures and restrictions do not apply when the proceeding is competitively bid, or involves a personnel or labor contract. For more information, see Government Code Section 84308.

AGENDA

Roll Call

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. Minutes - March 24, 2025

Committee Action Items

The public may comment on each item listed on the agenda for action as the item is taken up. The Chair will determine the number of persons interested in speaking on each item. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Chair may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes.

Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. Police Accountability Board Report: Fair and Impartial Policing Implementation
(Item contains supplemental material)
From: Police Accountability Board
Referred: January 27, 2025
Due: June 16, 2025
Recommendation: Approve the following recommendations and instruct the Berkeley Police Department (BPD) and Police Accountability Board (PAB) to proceed with their implementation:
Recommendations to the Berkeley Police Department
1. Three-prong approach.
a. Definition of Low-Level Traffic Infractions: A definition consistent with SB 50 should be adopted.
b. Primary Collision Factors: This prong should specify the mode of the party at fault.
c. Community Reports: Under the category of "a variety of unsafe driving incidents," policies should be put in place that specify which calls for service will result in law enforcement action. That specification should be derived from an analysis of the 13% of calls from community members that resulted in a citation or arrest, as per the City Auditor’s July 2021 report.
d. Community Caretaking: This prong needs more specificity, and its components should be based on Berkeley data rather than national statistics, as is done for Prong 1 (Primary Collision Factors). Specifically, the analysis should examine which other factors (non-PCFs) are highly associated with severe and fatal collisions in Berkeley. The open-ended quality of this prong may contribute to more non-safety-related stops than is called for in the Council directive. If more specificity is not possible or feasible, this prong should be eliminated.

e. Reporting: Future BPD updates on FIP implementation should include statistical information enabling an analysis of the impact of the three-prong approach on reducing or eliminating stops for low-level offenses—a primary focus of the Council directive—in a manner that supports an overall assessment and an understanding of the approach's impact on reducing racial disparities in traffic stops.
2. Evidence-based definition for stops of criminal suspects:
a. Establish an evidence-based definition for stops of criminal suspects.
b. Explain how precision-based policing, feedback loops, and accountability measures referenced in BPD FIP implementation updates relate to this recommendation and addresses the directive to establish an evidence-based definition for stopping criminal suspects.
3. Enhanced implicit bias training: Per the Council's directive, ensure that BPD personnel receive intensive annual training dedicated to implicit bias.
4. EIS: Pending the deployment of a new Early Intervention and Risk Management system, EIS audits should be focused on officers who are outliers on the variables stipulated in the Department's EIS, with a particular focus on racial disparities in stops, arrests, and searches. A designated PAB Member should serve as an observer in this process, as has been informally agreed to. Future audit reports should include the scope of what was reviewed and a clear statement of findings within the confines of officer confidentiality.
5. Written consent searches: Future reporting to the council should include the number of consent searches conducted per reporting period and their effect on racial disparities in searches, compared to consent search numbers before implementation.
6. Warrantless searches of people on supervised release: Future FIP updates should identify the impact of the new BPD Policy 311.6 on the numbers of searches and arrests of people on probation and parole and the racial disparities in them.
7. Profiling by proxy: Future BPD updates should specify what instructions dispatchers are given on profiling by proxy, and any impact the instruction and corresponding Communications Manual amendments have had on racial disparities in departmental response to calls for service.
8. Business cards: Ensure that business cards are distributed as mandated by the Council directive.
9. Make resources on police-civilian encounters publicly available, such as through RAHEEM.org.
Recommendations to the Police Accountability Board
1. Scenario-based training: The 2021 Council specifically referred to the PAB oversight of the implementation of a scenario-based training component in the existing officer training required by the California Penal Code. This topic will be agendized for discussion at a future PAB meeting,

Committee Action Items

including the appropriateness of, and ability of the PAB to oversee departmental training.
2. Crisis Intervention Team (CIT): The 2021 Council item refers to the PAB accelerating CIT activity. This will be discussed in future PAB meetings.
Recommendations to the Berkeley City Council
1. Establish metrics to assess the success of implementing FIP directives. Currently, the BPD appears to be focused entirely on policy, and on tests of bias, as evidenced in its recently published Annual Report. The PAB has focused instead on outcomes, addressing the key question of whether racial disparities have decreased in any of the areas subject to FIP directives.
2. Eliminate reporting requirements for recommendations that the PAB ascertains have been fully implemented.
3. Require BPD to report biannually on:
a. Traffic stops by each prong of their 3-prong framework and by race within each prong.
b. Stop, search, and arrest data by probation/parole status and race.
c. Calls for service by the race of the reporter and reportee.
Financial Implications: See report
Contact: Hansel Aguilar, Commission Secretary, (510) 981-4950

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting.

3. Discussion Item: Update on the Five-Year Infrastructure Plan and how it factors in with reduction of traffic violence
From: Councilmember Tregub
Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

Items for Future Agendas

- **Requests by Committee Members to add items to the next agenda**

Adjournment

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Written communications addressed to the Public Safety Committee and submitted to the City Clerk Department will be distributed to the Committee in advance of the meeting and retained as part of the official record.

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953 and applicable Executive Orders as issued by the Governor that are currently in effect. Members of the City Council who are not members of the standing committee may attend a standing committee meeting even if it results in a quorum being present, provided that the non-members only act as observers and do not participate in the meeting. If only one member of the Council who is not a member of the committee is present for the meeting, the member may participate in the meeting because less than a quorum of the full Council is present. Any member of the public may attend this meeting. Questions regarding public participation may be addressed to the City Clerk Department (510) 981-6900.

COMMUNICATION ACCESS INFORMATION:
This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at ada@berkeleyca.gov, (510) 981-6418 (V), or (510) 981-6347 (TDD) at least three business days before the meeting date. Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.

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I hereby certify that the agenda for this meeting of the Standing Committee of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on May 1, 2025.

Mark Numainville, City Clerk

Communications

Communications submitted to City Council Policy Committees are on file in the City Clerk Department at 2180 Milvia Street, 1st Floor, Berkeley, CA, and are available upon request by contacting the City Clerk Department at (510) 981-6908 or policycommittee@berkeleyca.gov.

BERKELEY CITY COUNCIL PUBLIC SAFETY COMMITTEE
SPECIAL MEETING MINUTES

Monday, March 24, 2025
10:30 AM

Redwood Room – 2180 Milvia Street, 6th Floor, Berkeley, CA 94704

Committee Members:

Councilmembers Rashi Kesarwani, Shoshana O'Keefe, and Brent Blackaby
Alternate: Mayor Adena Ishii

This meeting will be conducted in a hybrid model with both in-person attendance and virtual participation. All Committee meetings are recorded.

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MINUTES

Roll Call 10:36 a.m.

Present: Kesarwani, O'Keefe, Blackaby

Absent: None

Minutes for Approval

Draft minutes for the Committee's consideration and approval.

1. **Minutes - February 25, 2025**
   Action: M/S/C (Kesarwani/O'Keefe) to approve the February 25, 2025 minutes.
   Vote: All Ayes.

Committee Action Items

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Following review and discussion of the items listed below, the Committee may continue an item to a future committee meeting, or refer the item to the City Council.

2. **Adoption of CALFIRE Map and Additional Areas Designated as the City of Berkeley Fire Hazard Severity Zones**
   From: City Manager
   Referred: March 10, 2025
   Due: July 28, 2025
   Recommendation:
   1. Adopt first reading of an Ordinance to designate Fire Hazard Severity Zones (FHSZ) within the Local Responsibility Area as recommended by the California Department of Forestry and Fire Protection (CALFIRE) pursuant to Government Code Section 51178, and
   2. Designate areas not identified as Very High and High Fire Hazard Severity Zones by the State Fire Marshal, as Very High, and High Fire Hazard Severity Zones following a finding supported by substantial evidence in the record that the requirements of Government Code Section 51182 are necessary for effective fire protection within the area.
   Financial Implications: See report
   Contact: David Sprague, Fire, (510) 981-3473

   Action: 4 speakers. M/S/C (Blackaby/Kesarwani) to send item to City Council with a positive recommendation.
   Vote: All Ayes.

Committee Action Items

3. Modification and Adoption of Berkeley Fire Code Local Amendments
From: City Manager
Referred: March 10, 2025
Due: July 28, 2025
Recommendation:
1. Adopt the first reading of an Ordinance which proposes to amend certain portions of Section 19.48.020 of the Berkeley Municipal Code ("Amendments to the California Fire Code");
2. Adopt a Resolution setting forth findings as to local conditions applicable to the revised portions of Section 19.48.020 that require more stringent standards than those provided by the 2022 California Fire Code ("CFC") and amending Resolution number 70,611–N.S.;
3. In compliance with state law on adopting such codes by reference, hold a public hearing following the first reading, and before the second reading, and schedule the second reading and public hearing for April 15, 2025.
Financial Implications: Staff time
Contact: David Sprague, Fire, (510) 981-3473

Action: 3 speakers. M/S/C (Blackaby/O'Keefe) to send item to City Council with a positive recommendation.
Vote: Ayes – O'Keefe, Blackaby; Noes – None; Abstain – Kesarwani; Absent – None.

4. Resolution: Affirming Support for Berkeley Police Department, Police Accountability Board, and Office of the Director of Police Accountability in Response to Downtown Task Force Texting Offenses Investigation
From: Councilmember Blackaby (Author)
Recommendation: Adopt a Resolution affirming our community's support for the Berkeley Police Department (BPD) and acknowledging the work of the Police Accountability Board (PAB) & the Office of the Director of Police Accountability (ODPA) in investigating BPD's Downtown Task Force texting offenses, ultimately making recommendations to increase trust, transparency, and accountability. Additionally, the Resolution condemns any and all racism and misconduct, affirms the City Council's opposition to arrest quotas, and asks the California Legislature to extend the prohibition on arrest quotas, which are currently limited to the California Vehicle Code.
Financial Implications: See report
Contact: Brent Blackaby, Councilmember, District 6, (510) 981-7160

Action: 2 speakers. M/S/C (Kesarwani/O'Keefe) to send item to City Council.
Vote: All Ayes.

Committee Action Items

5. Resolution: Opposition to Police Brutality and Use of Force on Nonviolent Protesters
From: Councilmember Harrison (Author)
Referred: October 15, 2024
Due: March 24, 2025
Recommendation: Adopt a Resolution reaffirming the City of Berkeley's opposition to and condemning police brutality towards nonviolent protesters and discouraging use of "less-lethal" weapons for crowd control.
Financial Implications: See report
Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Action: 2 speakers. M/S/C (Kesarwani/O'Keefe) to send item to City Council with a negative recommendation.
Vote: All Ayes.

Unscheduled Items

These items are not scheduled for discussion or action at this meeting. The Committee may schedule these items to the Action Calendar of a future Committee meeting

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Unscheduled Items

observer in this process, as has been informally agreed to. Future audit reports should include the scope of what was reviewed and a clear statement of findings within the confines of officer confidentiality.
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7. Profiling by proxy: Future BPD updates should specify what instructions dispatchers are given on profiling by proxy, and any impact the instruction and corresponding Communications Manual amendments have had on racial disparities in departmental response to calls for service.
8. Business cards: Ensure that business cards are distributed as mandated by the Council directive.
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a. Traffic stops by each prong of their 3-prong framework and by race within each prong.
b. Stop, search, and arrest data by probation/parole status and race.
c. Calls for service by the race of the reporter and reportee.
Financial Implications: See report
Contact: Hansel Aguilar, Police Accountability Board, (510) 981-4950

Unscheduled Items

7. **Discussion Item: Update on the Five-Year Infrastructure Plan and how it factors in with reduction of traffic violence**
   From: Councilmember Tregub
   Contact: Igor Tregub, Councilmember, District 4, (510) 981-7140

8. **Discussion Item: Domestic Violence Report**
   From: Councilmember Taplin
   Contact: Terry Taplin, Councilmember, District 2, (510) 981-7120

Items for Future Agendas

- **None**

Adjournment

Action: M/S/C (O'Keefe/Kesarwani) to adjourn the meeting
Vote: All ayes

Adjourned at 12:32 p.m.

I hereby certify that the foregoing is a true and correct record of the Public Safety Committee meeting held on March 24, 2025.

_____
Wendy Sorensen, Assistant City Clerk

Communications

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Berkeley Police Department Memorandum

From: Chief Jen Louis

Date: 2/18/2025

To: Berkeley City Council Public Safety Policy Committee

Subject: Berkeley Police Department Response to the Police Accountability Board's 2024 Fair and Impartial Policing Implementation Report

On February 23, 2021, City Council approved recommendations submitted by then-Mayor Arreguin's Fair and Impartial Policing taskforce. Since that decision, the department began reporting quarterly to Council, offering detailed updates as recommendations advanced from initial planning to completion. Today, we provide substantial, near real-time data on our FIP efforts through the Transparency Hub and deliver a comprehensive account in our annual report. The Department is proud to have fully implemented the fourteens recommendations assigned by Council. Our commitment to transparent, fair, and impartial public safety remains unwavering.

This correspondence serves as a formal response to the Public Safety Policy Committee regarding the PAB's 2024 FIP Implementation Report. Please note that we submitted a direct response to both the Director of Police Accountability (DPA) and PAB when we first received the report in April 2024. We appreciate the opportunity to clarify our progress and address specific recommendations as we continue our work to ensure that policing in Berkeley remains fair, equitable, and effective.

Below is a detailed response organized by the categories of recommendations:

Recommendations to the Berkeley Police Department

Three-Prong Approach to Traffic Safety

PAB Recommendation:

- Adopt a definition of low-level traffic infractions consistent with SB 50.
- Specify the mode of the party at fault within the Primary Collision Factors prong.
- Define which unsafe driving calls merit a police response based on the fact that 13% of community calls result in a citation or arrest.
- Provide more concrete guidelines for the Community Caretaking prong, rooted in local data about severe collisions—or eliminate it if it remains too vague.
- Include data in future updates showing whether this approach reduces low-level stops and narrows racial disparities.

BPD Response:

Since implementing our Three-Pronged Traffic Enforcement model, we have decreased equipment violation stops by 21% between 2022 and 2023 and reduced disparities in all discretionary vehicle stops. Notably, the percentage of discretionary equipment violation stops involving Black individuals has declined from 29.49% in 2021 to 20.93% in 2023. While we remain open to future adjustments, we believe that our data-driven approach merits continued evaluation over time as we collect further evidence on its impact.

Berkeley Police Department Memorandum

Evidence-Based Definition for Stops of Criminal Suspects

PAB Recommendation:

- Establish an evidence-based definition for stops of criminal suspects and explain how precision-based policing, feedback loops, and accountability measures support this goal.

BPD Response:

Our department has long maintained that stops occur only when there is reasonable suspicion that a crime has been committed—a standard that is essential to protecting constitutional rights and maintaining public trust. We utilize precision-based policing by directing resources to high-need areas identified via crime trend analysis, coupled with robust feedback loops and regular reviews. This continuous, evidence-driven process ensures that our stops of criminal suspects, as well as traffic stops under our three-prong approach, adhere to the highest legal and ethical standards.

Enhanced Implicit Bias Training

PAB Recommendation:

- Ensure that BPD personnel receive intensive annual training dedicated to implicit bias.

BPD Response:

BPD continues to exceed the Council's directives through our comprehensive "KIND" training program, which integrates principles of Constitutional, Humane, Impartial, Neighborhood and Community Oriented, and DEI-Centered responses into all facets of officer training—from tactics and de-escalation to communication. Our policies also mandate strict accountability for any biased conduct. We remain committed to fostering a work environment that minimizes bias and upholds public trust.

Early Intervention System (EIS)

PAB Recommendation:

- Focus EIS audits on officers with notable racial disparity indicators, assign a PAB observer, and ensure transparent audit findings.

BPD Response:

BPD is actively collaborating with both the PAB and the Berkeley Police Association on the procurement and implementation of a state-of-the-art Early Intervention System developed by Benchmark Analytics. In February 2025, the department finalized a contract with Benchmark and began implementation. The system will continuously monitor 91 officer/incident variables—including incident context, sequence of events, behavioral patterns, and peer comparisons—to provide a nuanced assessment of officer performance. We look forward to refining our practices in consultation with PAB experts as this system is integrated.

Berkeley Police Department Memorandum

Written Consent Searches

PAB Recommendation:

- Include in future FIP updates the number of consent searches and their effects on racial disparities.

BPD Response:

This recommendation has been fulfilled. Our current reporting on the Transparency Hub's dashboards and open data portal as well as in our Annual Report includes data on consent searches. Academic standards favor yield rate ratios as a more appropriate measure for evaluating biased decision-making. Accordingly, we do not plan to expand our reporting on this item further.

Warrantless Searches of People on Supervised Release

PAB Recommendation:

- Report on changes in search and arrest rates for individuals on supervised release under Policy 311.6, including any racial disparities.

BPD Response:

This recommendation is already fulfilled. Data on parole/probation searches is tracked and publicly available as part of our RIPA stop data that we publish and update daily on the Transparency Hub. No additional reporting is planned on this matter.

Profiling by Proxy

PAB Recommendation:

- Provide details on dispatcher guidance regarding profiling by proxy and evidence that these protocols have curtailed racial bias in responses.

BPD Response:

Our existing protocols as documented in the Communications Center Operations Manual and Policies 401 and 1105.5 address profiling by proxy. Given that it is generally impossible to discern the race of a 911 caller in most scenarios, the overall departmental training efforts related to implicit bias and other KIND training, we do not anticipate expanding training or protocols on this topic.

Business Cards

PAB Recommendation:

- Ensure that business cards are distributed as mandated by the Council directive.

BPD Response:

This recommendation has been fulfilled. Business cards containing information on how to submit a complaint and other relevant resources are in active circulation.

Berkeley Police Department Memorandum

RAHEEM.org

PAB Recommendation:

- Make resources on police-civilian encounters publicly available on the department's website, directly the public to a platform such as RAHEEM.org.

BPD Response:

The Department completed this recommendation early in the implementation process, providing a direct link on our City of Berkeley webpage Make a Commendation or Complaint | City of Berkeley to the American Civil Liberties Union (ACLU) page Know Your Rights | Stopped by Police | ACLU

The decision was intentional, to link to an organization that is internationally recognized, that has been in existence since the 1920's, and is made up of "more than 1.1 million members, 500 staff attorneys, thousands of volunteer attorneys, and offices throughout the nation, the ACLU of today continues to fight government abuse and to vigorously defend individual freedoms including speech and religion, a woman's right to choose, the right to due process, citizens' rights to privacy and much more."

While we appreciate the continued suggestion of RAHEEM.org, that organization has been discredited as a fraudulent site (as noted in a number of New York Times articles, with the first appearing on August 25, 2024, as well as a November 2025 Washington Post article on the DC attorney general's office lawsuit for fraud).

Information on submitting complaints is printed on our business cards and is also prominently posted on the city's website at multiple locations.

Additional Considerations

We would like to reiterate that BPD has fulfilled all 14 FIP recommendations that were assigned to the department. These reforms have involved significant policy changes, resulting in fewer stops, balanced search yields, and ongoing updates on our Transparency Hub. Although the PAB report restates several recommendations, we note that many proposed measures—such as additional data collection (e.g., the race of 911 callers) and direct oversight of training—exceed the PAB's stated Charter direction or rely on data that is not feasibly collectible.

Our reforms rest on robust data collection and continuous evaluation and ensure that our practices maintain the highest legal and ethical standards. Our training needs are continuously driven by legal mandates, timely legal updates, data analysis, audits, and early intervention efforts. These mechanisms ensure that we are providing training exactly where it is needed. Currently, our assessments show that our existing training adequately addresses these standards and no additional training measures regarding stay-away orders are warranted at this time. For instance, nearly every officer has completed a 40-hour Crisis Intervention Training course, and our Annual Report already provides evidence-based metrics on implicit bias and racial disparities.

Furthermore, while the report acknowledges external factors driving racial disparities, it continues to hold BPD fully accountable for outcomes influenced by broader social issues. We believe a collaborative approach that recognizes both department-level initiatives (such as our new Early Intervention System and rigorous evidence-based analyses of officer behavior) and the larger social context is necessary to achieve lasting change.

Berkeley Police Department
Memorandum

Conclusion

The Berkeley Police Department remains fully committed to fair and impartial policing. We value our ongoing collaboration with the Police Accountability Board and the Public Safety Policy Committee. Our reforms—ranging from the Three-Pronged Traffic Enforcement model to comprehensive KIND training and the upcoming Early Intervention System—demonstrate our dedication to continuous improvement and community trust.

Thank you for the opportunity to provide this follow-up response. We look forward to continued dialogue and collaboration to ensure that Berkeley's policing reflects our shared commitment to justice and equity.

Cc:

Paul Buddenhagen, City Manager

Hansel Aguilar, Director of Police Accountability

Josh Cayetano, Police Accountability Board Chair

Mark Numainville, City Clerk

ACTION CALENDAR

February 11, 2025

To: Honorable Mayor and Members of the City Council

From: Police Accountability Board

Submitted by: Hansel A. Aguilar, Director of Police Accountability

Subject: Police Accountability Board Report: Fair and Impartial Policing Implementation

RECOMMENDATION

Approve the following recommendations and instruct the Berkeley Police Department (BPD) and Police Accountability Board (PAB) to proceed with their implementation:

Recommendations to the Berkeley Police Department

1. Three-prong approach.
    a. Definition of Low-Level Traffic Infractions: A definition consistent with SB 50 should be adopted.
    b. Primary Collision Factors: This prong should specify the mode of the party at fault.
    c. Community Reports: Under the category of "a variety of unsafe driving incidents," policies should be put in place that specify which calls for service will result in law enforcement action. That specification should be derived from an analysis of the 13% of calls from community members that resulted in a citation or arrest, as per the City Auditor's July 2021 report.
    d. Community Caretaking: This prong needs more specificity, and its components should be based on Berkeley data rather than national statistics, as is done for Prong 1 (Primary Collision Factors). Specifically, the analysis should examine which other factors (non-PCFs) are highly associated with severe and fatal collisions in Berkeley. The open-ended quality of this prong may contribute to more non-safety-related stops than is called for in the Council directive. If more specificity is not possible or feasible, this prong should be eliminated.
    e. Reporting: Future BPD updates on FIP implementation should include statistical information enabling an analysis of the impact of the three-prong approach on reducing or eliminating stops for low-level offenses—a primary

focus of the Council directive—in a manner that supports an overall assessment and an understanding of the approach's impact on reducing racial disparities in traffic stops.

2. Evidence-based definition for stops of criminal suspects:
    a. Establish an evidence-based definition for stops of criminal suspects.
    b. Explain how precision-based policing, feedback loops, and accountability measures referenced in BPD FIP implementation updates relate to this recommendation and addresses the directive to establish an evidence-based definition for stopping criminal suspects.
3. Enhanced implicit bias training: Per the Council's directive, ensure that BPD personnel receive intensive annual training dedicated to implicit bias.
4. EIS: Pending the deployment of a new Early Intervention and Risk Management system, EIS audits should be focused on officers who are outliers on the variables stipulated in the Department's EIS, with a particular focus on racial disparities in stops, arrests, and searches. A designated PAB Member should serve as an observer in this process, as has been informally agreed to. Future audit reports should include the scope of what was reviewed and a clear statement of findings within the confines of officer confidentiality.
5. Written consent searches: Future reporting to the council should include the number of consent searches conducted per reporting period and their effect on racial disparities in searches, compared to consent search numbers before implementation.
6. Warrantless searches of people on supervised release: Future FIP updates should identify the impact of the new BPD Policy 311.6 on the numbers of searches and arrests of people on probation and parole and the racial disparities in them.
7. Profiling by proxy: Future BPD updates should specify what instructions dispatchers are given on profiling by proxy, and any impact the instruction and corresponding Communications Manual amendments have had on racial disparities in departmental response to calls for service.
8. Business cards: Ensure that business cards are distributed as mandated by the Council directive.
9. Make resources on police-civilian encounters publicly available, such as through RAHEEM.org.

Recommendations to the Police Accountability Board

1. Scenario-based training: The 2021 Council specifically referred to the PAB oversight of the implementation of a scenario-based training component in the existing officer training required by the California Penal Code. This topic will be agendized for discussion at a future PAB meeting, including the appropriateness of, and ability of the PAB to oversee departmental training.
2. Crisis Intervention Team (CIT): The 2021 Council item refers to the PAB accelerating CIT activity. This will be discussed in future PAB meetings.

Recommendations to the Berkeley City Council

1. Establish metrics to assess the success of implementing FIP directives. Currently, the BPD appears to be focused entirely on policy, and on tests of bias, as evidenced in its recently published Annual Report. The PAB has focused instead on outcomes, addressing the key question of whether racial disparities have decreased in any of the areas subject to FIP directives.
2. Eliminate reporting requirements for recommendations that the PAB ascertains have been fully implemented.
3. Require BPD to report biannually on:
    a. Traffic stops by each prong of their 3-prong framework and by race within each prong.
    b. Stop, search, and arrest data by probation/parole status and race.
    c. Calls for service by the race of the reporter and reportee.

SUMMARY

This report formally assesses the Berkeley Police Department's (BPD) progress in implementing the Fair and Impartial Policing (FIP) directives adopted by the Berkeley City Council in February 2021. The Mayor's Working Group developed these directives on Fair and Impartial Policing following two years of consultations with experts and BPD representatives. The directives were established in response to findings in the 2018 Center for Policing Equity (CPE) report, which identified significant racial disparities in BPD's stops, arrests, and searches, particularly affecting Black and Latino/a individuals.

The report includes an analysis of BPD's efforts to implement the FIP policies, focusing on whether these efforts have successfully reduced racial disparities in policing practices. It acknowledges the BPD's progress in certain areas, such as a slight reduction in racial disparities in vehicle stops. Still, it highlights concern regarding the increase in disparities in pedestrian stops and the ongoing pronounced disparities in arrests and searches.

The PAB initially submitted this report to the City Council for presentation at the October 15, 2024 Regular Meeting. During the PAB meeting on September 25, 2024, the PAB voted to request the withdrawal of the item[1], a request that was granted by the Agenda and Rules Committee on September 30, 2024.[2] Notable findings of this report include, but are not limited to:

[1] The motion carried with 6 ayes in favor, 0 noes, and 2 PAB members absent. Police Accountability Board Regular Meeting Minutes for September 25, 2024: [link]
[2] Berkeley City Council Agenda and Rules Committee Special Meeting Minutes for September 30, 2024: https://berkeleyca.gov/sites/default/files/legislative-body-meeting-minutes/09-30%20Minutes%20-%20Agenda%20Committee.pdf

- The BPD has completed the implementation of some FIP Council directives, establishing implementation programs for others, and appears not to have begun implementing some directives.

- Racial disparities in vehicle stops by the BPD have decreased slightly since the CPE report but remain high.

- Racial disparities in pedestrian stops have substantially increased.

- Racial disparities in arrests and searches remain pronounced.

- Consent searches have decreased, but racial disparities in consent searches remain high.

- The percentage of stops for equipment and other non-safety-related infractions declined from 24.8% of all traffic stops in 2022 to 19% in 2023.

- A full Early Intervention and Risk Management System is in the very early stages.

- Enhanced implicit bias training has not yet begun.

Recommendations include, but are not limited to:

- The BPD's quarterly reports on the implementation of FIP should focus on policy modifications and outcomes, specifically whether and how those policy reforms have impacted racial disparities.

- The three-pronged approach to traffic enforcement should be reviewed and further oriented towards reducing low-level, non-safety-related stops.

- As per the Council’s FIP directive, annual enhanced implicit bias training should be institutionalized.

- A full Early Intervention and Risk Management System should be adopted as soon as possible. In the meantime, random audits of officers should be replaced with targeted audits of "outliers."

- Full accountability must be ensured for officers whose speech or behavior demonstrates racial animus or other bias and "damages the mission" of the Berkeley Police Department.

FISCAL IMPACTS OF RECOMMENDATION

Implementing the PAB's recommendations will incur costs related to staff time, technology requirements, and maintenance of such technology.

CURRENT SITUATION AND ITS EFFECTS

On February 23, 2021, the Berkeley City Council unanimously approved a set of policy recommendations submitted by the Mayor's Working Group on Fair and Impartial Policing (FIP). As part of this decision, the Police Review Commission (PRC) and its successor, the Police Accountability Board (PAB), were tasked with monitoring and evaluating the Berkeley Police Department's (BPD) implementation of FIP directives. These directives require the BPD to provide quarterly updates to the City Council on the progress of their implementation. To comply with the Council Directive, the Police Accountability Board established a subcommittee on August 4, 2021, to monitor the progress of these reports.

BACKGROUND

The purpose of the PAB 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 offer a means for prompt, impartial, and fair investigations of complaints brought by members of the public against sworn employees of the Berkeley Police Department.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with this report.

RATIONALE FOR RECOMMENDATION

The PAB presents these recommendations to the BPD, the PAB, and the City Council, aiming to enhance the progress made in implementing the FIP recommendations, ensure that all directives are fully addressed, and set the expectation that future BPD updates include an analysis of racial disparity outcomes.

CONTACT PERSON

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Attachments:

1: Police Accountability Board Report: Fair and Impartial Policing Implementation

2024

Police Accountability Board Report: Fair and Impartial Policing Implementation

Approved* by the Police Accountability Board on April 24, 2024

*(6 Aye Votes and 1 Nay Vote)

Meeting Link:
https://tinyurl.com/PAB-FIP-Report-Approval

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Introduction

On February 23, 2021, the Berkeley City Council (City Council or Council) unanimously passed the package of policy recommendations that the Mayor's Working Group on Fair and Impartial Policing (FIP) forwarded to City Council after two years of meetings with experts and Berkeley Police Department (BPD) representatives (See Attachments 1 and 2). As part of that package, the Police Review Commission (PRC) and its successor the Police Accountability Board (PAB) were assigned responsibility for "monitoring and assessing" BPD implementation of the FIP directives. The directives included a requirement for quarterly updates from the BPD to City Council on implementation progress. A chart summarizing the BPD updates from June 2021 to October 2023 is provided in Attachment 3.

The goal of the Mayor's Fair and Impartial Working Group was to discuss ways to address racial disparities in BPD stops, arrests, and searches, as presented to the Berkeley community in the 2018 Center for Policing Equity (CPE) report[1] commissioned by the Council. That report found that, given the city's population demographics, Black motorists were 6.5 times more likely to be stopped by Berkeley police than White motorists and that Black pedestrians were 4.5 times more likely to be stopped than White pedestrians.

The PAB recognizes the ongoing efforts taken by the BPD to implement the Fair and Impartial Policing mandates, as represented in the quarterly updates from Chief Louis. This PAB report, submitted pursuant to the PAB's directive to monitor FIP implementation, is an independent assessment of progress to date. The focus of this assessment is not only on BPD changes in written policy, but also on whether progress has been made in reducing racial disparities in BPD stops, arrests, and searches.

[1] Center for Policing Equity. *The Science of Justice: Berkeley Police Department, National Justice Database City Report*. May 2018. https://berkeleyca.gov/sites/default/files/documents/Berkeley-CPE-Report-May-2018.pdf

Before proceeding, it is important to note that a finding of racial disparities does not, by that fact alone, indicate racial bias among individual police officers or the institution. Disparity is not synonymous with bias or discrimination. A measurement of racial disparity simply indicates an inequality or disproportion among or between various races on a particular variable (such as police stops), whatever the source of that inequality. Bias, on the other hand, can be defined as individual or institutional prejudice against a particular group, which may lead to disparities. This report focuses on racial disparities, as did the Mayor's Working Group on Fair and Impartial Policing and City Council's directives. Several factors may account for such disparities. These factors include, but are not limited to, socio-economic inequalities associated with race; cultural factors; institutional decision making; and, finally, individual officer bias. These factors may act independently of each other or in interaction with each other, amplifying their potential impact. It is not our goal to untangle the complex web of factors responsible for those disparities, nor is it within the scope of our work--or our ability, given data and resource limitations--to do so. Instead, the goal is to establish policies and practices that have the potential to reduce disparities and curtail the impact of any potential bias.

Key findings include, but are not limited to:

- The BPD has completed implementation of some FIP Council directives, is in the process of establishing implementation programs for other FIP directives, and appears not to have begun implementation of others.
- Racial disparities in vehicle stops by the BPD have decreased slightly since the CPE report, but remain high
- Racial disparities in pedestrian stops have substantially increased
- Racial disparities in arrests and searches continue to be pronounced
- The number of consent searches has decreased, but racial disparities in consent searches remain high

- The percentage of stops for equipment and other non-safety related infractions declined from 24.8% of all traffic stops in 2022 to 19% in 2023
- A full Early Intervention and Risk Management System is in very early stages
- Enhanced implicit bias training has not begun

Recommendations include, but are not limited to:

- The BPD quarterly reports on implementation of FIP should focus not only on policy modifications, but on outcomes, specifically the issue of whether and how those policy reforms have impacted racial disparities
- The three-pronged approach to traffic enforcement should be reviewed and further oriented towards reducing low-level, non-safety related stops
- Annual enhanced implicit bias training should be institutionalized, as per the Council's FIP directive
- A full Early Intervention and Risk Management System should be adopted as soon as possible. In the meantime, random audits of officers should be replaced by targeted audits of "outliers"
- Full accountability must be ensured for officers whose speech or behavior demonstrates racial animus or other bias and "damage[s] the mission… of the Berkeley Police Department"

Our report begins with recent statistics on stops, arrests, and searches. As we will see, a pattern of racial disparities remains since the CPE issued its report in 2018. While the racial disparity in vehicle stops has fallen slightly, racial disparities in pedestrian stops has increased substantially. The fact of racial disparities is not an abstract or academic issue. Racial disparities in policing have a serious impact on the lives of many Black and Latino/a people.

The report then includes a discussion of the status of BPD's implementation efforts, as well as questions that emerge from Chief Louis's quarterly updates[2]. We conclude with recommendations for the BPD, the PAB, and the Council, with the goal of more effectively addressing racial disparities.

Related to the issue of the meaning of disparities, the BPD presented their Annual Report to City Council on March 12, 2024. As part of that report, they included "tests for bias" in traffic stops, searches, and use of force. We have examined the analyses presented in that report and note several fundamental challenges to their conclusion that BPD traffic stops, searches, and use of force are "race-neutral." See Appendix 1 for a brief discussion of the PAB's concerns with the BPD analysis.

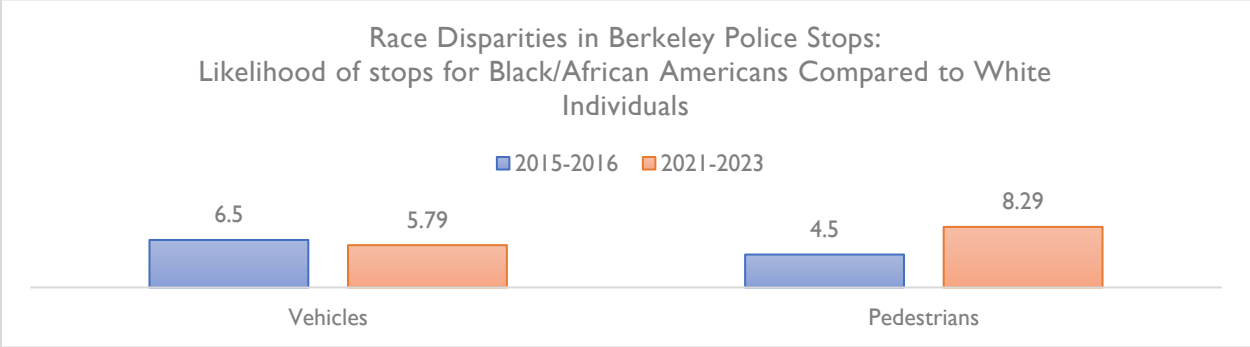
Fair and Impartial Policing Statistical Profile

The BPD data that were derived from the Department's Transparency Hub and analyzed by the ODPA and the PAB reveal little progress in reducing racial disparities in stops since the CPE report was released in 2018. That report showed that for the period 2012-2016, Black motorists were 6.5 times more likely to be stopped than White motorists based on Berkeley demographics, and Black pedestrians in 2015-2016 were 4.5 more likely to be stopped than White pedestrians.

[2] In addition to direction to the Berkeley Police Department to implement reforms, the February 2021 City Council action included referral of some FIP recommendations to the public safety reimagining process, and others to be "taken up by the PAB". This report does not address recommendations that were referred to the reimagining process. The report substantively addresses one of the three recommendations referred to the PAB (annual implicit bias training).

Berkeley Police Department statistics show that from April 1, 2021 to October 31, 2023[3], of the 13,620 stops of bicyclists, motorists and pedestrians, 45.73% were White individuals, 44.77% were Black individuals, and 20.81% were Latino/a individuals.[4] Based on Berkeley population figures[5], Black motorists were 5.8 times more likely to be stopped by Berkeley police than White motorists. The racial disparity has worsened for pedestrian stops, with Black pedestrians now 8.3 times more likely to be stopped than White pedestrians.[6]

Figure 1 Likelihood of stops for Black/African Americans Compared to White Individuals



[3] The April 1, 2021 date was chosen in consideration of the fact that the FIP directives were issued by Council on February 23, 2021. The end date of October 31, 2023 was used because we initiated this analysis in December 2023 and used the data then available. October 3, 2023 was the date of the last full quarterly update from the BPD. Unless otherwise noted, the data in this report covers the period from April 1, 2021 to October 31, 2023.

[4] Occasionally, small differences will appear in the data presented here and those in the BPD Transparency Hub. These differences, which are minor and do not affect the percentages or ratios reported, are due to periodic data updates or modifications made in the BPD Transparency Hub. All the analyses reported are derived from data in our "Data Notebook" which is available in Appendix 2.

[5] Population data sources from U.S. Census Bureau, American Community Survey (ACS) 1-Year Estimates Data Profiles, Table DP05 (2022).: https://data.census.gov/table/ACSDP5Y2022.DP05?g=040XX00US06_160XX00US0606000&tid=ACSDP5Y2022.DP05

[6] In order to calculate the greater likelihood of Black motorists or pedestrians being stopped than White individuals, we divided the number of stops of each race/ethnicity by their numbers in the Berkeley population.

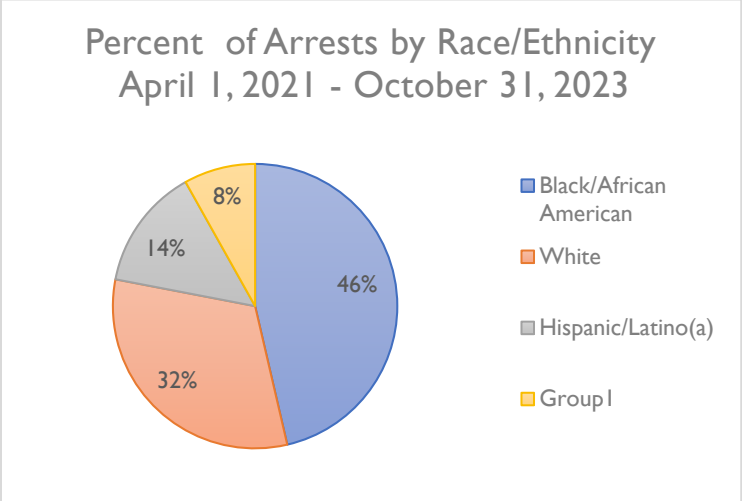
Looking at overall stop data for Berkeley residents only, a significant racial disparity persists. Black people residing in Berkeley were 6.55 times as likely to be stopped as their White counterparts. The Table below shows the absolute number of bicycle, pedestrian and vehicle stops, by race, for residents and non-residents of Berkeley.

Table 1 Number of Stops of Non-Berkeley Residents vs. Berkeley Residents by Race/Ethnicity.

Race/Ethnicity	Stops of Non-Berkeley Residents, 2021-2023	Stops of Berkeley Residents, 2021-2023
Black	1615	2814
Hispanic/Latino(a)	1212	955
White	1626	3112
Other	1109	1177
Total	5562	8058

With respect to arrests, of 2,202 arrests in this period, Black people were 50.47 percent of the total, White people 34.45 percent, and Latino/as 15.08 percent. This means that, based on population figures, Black people were 10.4 times as likely to be arrested as White people in Berkeley, and Latinos were twice as likely. Looking at these data a different way, Black people were 6.47 times more likely to be arrested than their population would suggest, White people were .62 times less likely, and Latino/as 1.25 times more likely to arrested.

Figure 2 Percent of Arrest by Race/Ethnicity (April 1, 2021 to October 31, 2023)



The Table below shows the absolute number of arrests by race.

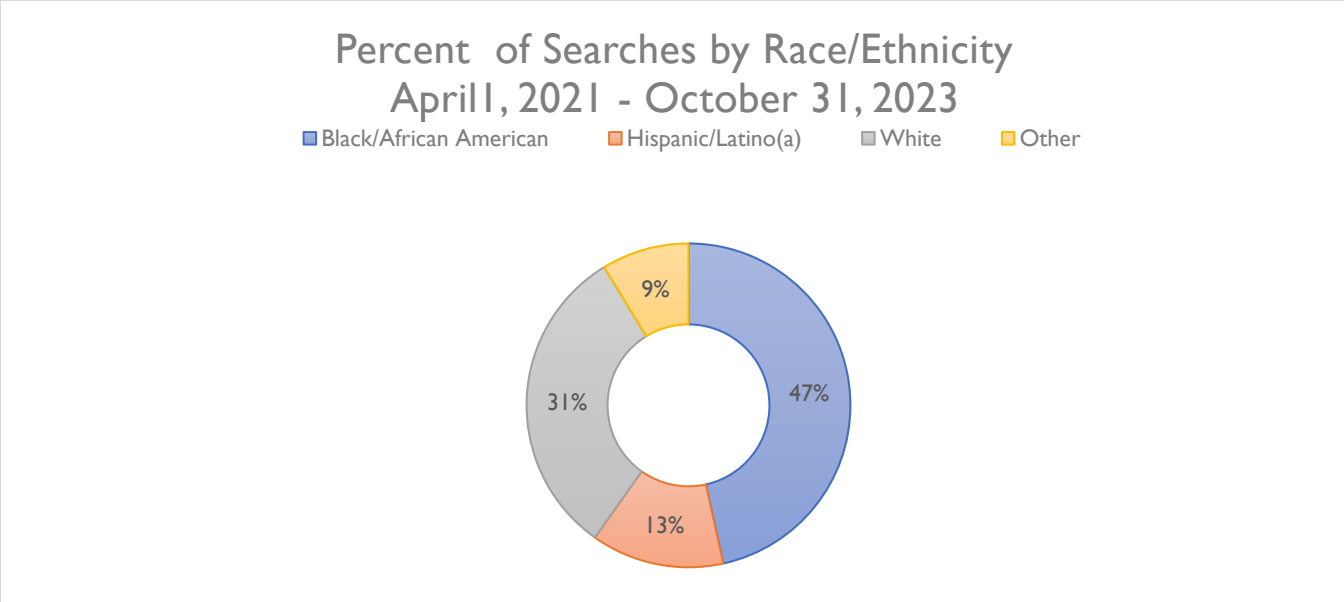
Table 2 Number of Arrest by Race/Ethnicity for Reporting Period.

Race/Ethnicity	Number of Arrests
Black	1021
Hispanic/Latino(a)	305
White	697
Other	179
Grand Total	2202

With regard to searches, of the 2,421 searches conducted by the BPD during the period of April 1, 2021 to October 31, 2023, Black individuals were 46.55 percent of the total, White individuals were 31.47 percent, and Latino/as were 13.26 percent. This indicates that Black individuals were 10.5 times more likely to be searched compared to White individuals, while Latino individuals were 1.9

times more likely.[7] Alternatively, Black individuals were 5.97 times more likely to be searched than expected based on their population representation, White individuals were 0.57 times less likely, and Latino/as were 1.10 times more likely.

Figure 3 Percent of Searches by Race/Ethnicity (April 1, 2021 - October 31, 2023)



Policy and Practices Directive and Reforms

Reducing stops for low-level infractions and focusing on safety in traffic stops.

The FIP recommendation regarding traffic stops was to "prioritize safety in traffic stops" and "discontinue stops for minor offenses." The FIP Working Group saw this as a way to reduce racial disparities and eliminate pretextual traffic stops. The motion approved by the City Council was to "Implement a new evidence-based traffic enforcement model that emphasizes safety as the primary reason for traffic stops, rather than merely addressing minor offenses." Neither the Mayor's Working Group nor the Council provided a clear definition of "minor

[7] Similar to our calculations for stops and arrests, to determine the greater likelihood of Black and Latino/a individuals than White individuals to be searched, we divided the number of searches of Black, Latino/a and White individuals by their respective numbers in the population.

offenses." The PAB recommends that the BPD adopt the definition utilized in Senate Bill 50, as outlined in the footnote below.[8]

The BPD is using a 3-pronged approach to traffic safety ("Primary Collision Factors"; "Community Reports"; and "Community Caretaking") to fulfill the Council directive (See Attachment 4 for BPD Special Order 1106.2). Quarterly BPD updates report that implementation of this recommendation is complete.

The first prong of BPD's three-pronged approach, known as "Primary Collision Factors" or PCF, is generally excellent and data-driven at the local level. This prong consists of factors that commonly lead to fatal or severe collisions in Berkeley, including unsafe speed, disregarding pedestrian right-of-way at crosswalks, failure to yield for turns, red light violations, and stop sign violations.

One important update to this prong would be to specify not only the violation but also the mode of the party at fault (e.g., stop sign violations by drivers are a common cause of fatal and severe collisions in Berkeley, but stop sign violations by bicyclists are not, and the PCF categories should reflect this). It is expected that most, if not all, stops should occur in response to these well-documented safety issues, following the Council's directive.

[8] In 2023, a Bill was introduced in the California Legislature, SB50 ("An Act to Amend Sections 21 and 21100 of, and add Section 2804.5, to the Vehicle Code"), that stipulated that "notwithstanding any other law, a peace officer shall not stop or detain the operator of a motor vehicle or bicycle for a low-level infraction…". The Bill, which was tabled after a third reading and may be re-submitted this year, defined a "low-level infraction" as "a violation related to the registration of a vehicle or vehicle equipment," as specified; "a violation related to the positioning or number of license plates when the rear license plate is clearly displayed…"; "a violation related to vehicle lighting equipment not illuminating, if the violation is limited to a single brake light, headlight, rear license plate, or running light or a single bulb in a larger light of the same," as specified; "a violation related to vehicle bumper equipment," as specified; "a violation related to bicycle equipment or operation," as specified.

The second prong ("Community Reports") consists of "responding to calls from community members" and includes such things as "possible DUI driver (i.e., car reportedly swerving)"; "driver fallen asleep at red light"; "a variety of unsafe driving incidents"; "crime with get-away vehicle description." While some of these community calls no doubt require an immediate response, the category is broad and opens the door to potential profiling by proxy. At a minimum, under the category of "a variety of unsafe driving incidents," policies should be put in place that specify which calls for service will result in law enforcement action.

The City Auditor's data analysis[9] shows that only 13% of calls from community members resulted in a citation or arrest, compared to 42% of officer-initiated stops. To effectively reduce the potential for profiling by proxy, analysis of this 13% should be conducted to determine what types of community calls are most likely to yield a law enforcement response crucial to public safety. The PAB recommends that this prong then be substantially reformulated based on the data analysis of which types of calls for service result in enforcement actions and which are more likely to open the door to profiling by proxy.

The third prong, "Community Caretaking," is the least specific and consists of three examples: "seatbelt violations"; "distracted driving (hands-free law)"; and "DUI". As described by the BPD, these are not primary collision factors according to the California Highway Patrol because they are not the proximate cause of a collision. Because this prong is open-ended and consists only of several examples, it allows for maximum discretion with no real parameters.

The PAB recommends more specificity in this prong and that its components be based on Berkeley data rather than national statistics, as BPD did for Prong 1 (Primary Collision Factors, or PCFs). Specifically, the analysis should

[9] Data Analysis of the City of Berkeley's Police Response, 07/02/2021
https://berkeleyca.gov/sites/default/files/2022-01/Data-Analysis-Berkeley-Police-Response.pdf

examine which other factors (non-PCFs) are highly associated with severe and fatal collisions in Berkeley. The open-ended quality of this prong may contribute to more non-safety related stops than is called for in the Council directive. If more specificity is not possible or feasible, this prong should be eliminated.

In addition to further clarification and specification of factors and policies related to prongs two and three, future BPD updates to Council should include statistical information enabling an analysis of the impact of the three-prong approach on reducing or eliminating stops for low-level offenses in a manner that supports an overall assessment, as well as an understanding of the impact of the approach on reducing racial disparities.

The PAB analysis of vehicle stops reveals that little progress has been made on reducing racial disparities. Given this finding, careful scrutiny of the three-pronged approach needs to be undertaken, with future BPD updates analyzing disparity outcomes and focusing on their reduction, as appropriate.

Our analysis of BPD raw data on traffic stops[10] in 2022 (when the three-pronged approach was established) and the first three quarters of 2023 reveals that the number of traffic violation stops increased from 2883 in 2022 to 3297 in the first three quarters of 2023. The percentage of stops for equipment and other such low-level infractions declined from 24.8% in 2022 to 19% in 2023. While the percentage of low-level stops thus declined, their numbers are still relatively high

[10] For this calculation, we included all vehicle stops for 2022 and for the first three quarters of 2023. The BPD data include the primary reason for each stop. From these raw data we were able to count all stops for low-level equipment violations or other non-safety related violations, for example misplaced registration tags, failure to dim beams, faulty window installation, etc. The BPD data included a few categories—such as those relating to improper parking, trespassing, bicycle helmet infractions, littering, and vehicle theft—that were not appropriate to include in these counts of traffic violations. We excluded those few categories (n=79 for 2022; n=70 for 2023) from our calculations.

despite the three-pronged approach and the directive that such stops be minimized.

Table 3 Percentage of Stops for Equipment Violations and Other Low-Level Infractions

Year	Traffic Stops	% of Stops for Equipment violations and other low-level infractions
2022	2883	24.8%
2023	3297	19%

Clear, evidence-based definition of stops of criminal suspects.

The FIP Working Group recommended "us[ing] a clear, evidence-based definition for stops of criminal suspects." This was not meant to be primarily about traffic stops but all stops of criminal suspects, including motorists, cyclists and pedestrians. Following this recommendation, Council directed the BPD to amend policies "reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects." The Department's quarterly updates state that the BPD "is establishing a precision based policing model that considers data and public safety. This model aims to reduce the number of stops that studies have shown had minimal impact on public safety."

The PAB appreciates the BPD June 2023 and October 2023 update statement that "ensuring that we implement approaches that identify and work to reduce racial disparities will be a cornerstone to our evidence-based approaches." However, without more specifics about the department's "precision-based policing model" and "a feedback loop with information flowing both ways", it is difficult to assess whether these additions have the potential to reduce racial disparities. More specificity in this context is particularly critical as the data presented in this report indicate that racial disparities remain high.

The BPD June and October 2023 updates also state that this "feedback loop … creates an accountability measure." Does this mean there is

accountability for racial disparities? If so, what does it consist of? The next BPD update should include greater specificity regarding precision-based policing, feedback loops, and accountability measures. Further, and significantly, none of the BPD updates have included a definition of what constitutes legitimate stops for criminal suspects, evidence-based or otherwise. Although the BPD indicated that this recommendation was implemented as of September 2022, a definition is still outstanding.

Only use race and ethnicity as determining factors together with other clear criteria.

BPD updates indicate that this recommendation has been completed because formal policies, state law, and the Constitution prohibit using race as the defining factor in making stops, arrests, and searches. The PAB is concerned that the BPD suggests no change is needed; the question is not whether BPD policies or state or federal law allow the use of race as a defining factor—clearly, they do not. The question is how to prevent discretionary actions in the field from inadvertently introducing race as the determining factor. Most important, how are race and ethnicity used as determining factors "together with other clear criteria"? Future updates should include more specificity on this important question of how race and ethnicity may be used with other factors. Examples may be useful here.

Enhanced Implicit Bias Training

The FIP directives passed by Council "require enhanced annual implicit bias training for police." The BPD updates state that there has been "ongoing training in topics such as implicit bias, racial profiling…". The PAB has been informed by the BPD that "The topic of bias is covered as a subtopic throughout various trainings" such as de-escalation and tactical communication. This likely falls short of the enhanced annual implicit bias training that was called for in the Council directive. Full compliance with the Council directive requires that the BPD install

annual intense implicit bias training, not the less intensive approach to implicit bias as a subtopic to other materials as currently practiced.

Early Intervention System (EIS)[11]

An effective EIS was a central component of the FIP recommendations, and the focus—as with the FIP program as a whole-- was on racial disparities. As the Working Group stated in its presentation to Council in February 2021, an effective Early Intervention System would "involve identifying officer outliers in stops, searches, and use of force and their outcomes and examining the reasons for racial disparities." Racial disparities take a back seat in the BPD quarterly updates, including in its description of an amended EIS program. Beyond this important omission, BPD updates have been inconsistent across quarterly reports with regard to how this directive has been implemented (See Attachment 3). After relatively minor tweaking, the BPD reported that the EIS directive had been completed.

Additionally, recent updates report that periodic audits of several randomly chosen officers have been added to the EIS process. While audits of a few randomly chosen officers may occasionally be useful, the intent of the FIP was to focus on "outliers", a neutral term of art that refers to officers whose performance on certain indicators is outside the BPD average. As the focus of the FIP was on racial disparities, in the case of EIS it is important to focus on those units or officers for whom stops are disproportionately numerous and/or racial disparities most pronounced. The allegations of racism, disdain for the unhoused, and implicit

[11] The PAB acknowledges the Council's allocation of funding for designing and implementing a comprehensive Early Intervention and Risk Management System (EIRMS). However, the $100,000 appropriation for the evaluation, design *and* implementation of an EIRMS is unlikely to be sufficient. Therefore, the budget for the EIRMS should be augmented to support not only its design but its near-term implementation.

arrest quotas in the Downtown Bike Force have drawn attention to the importance of such a directed focus when doing EIS audits.

In April 2023, City Council referred $100,000 to the June 2023 budget to hire a consultant for the design and help with implementing a new Early Intervention and Risk Management System. It will take some time before that project is complete. In the interim, EIS audits should be focused on officers who are outliers on the variables stipulated in the Department's EIS, with a particular focus on racial disparities in stops, arrests, and searches. In addition, a designated PAB Member should serve as an EIS observer. With regard to the latter, the PAB is pleased that observation by a PAB Member has recently been agreed to by the Chief.

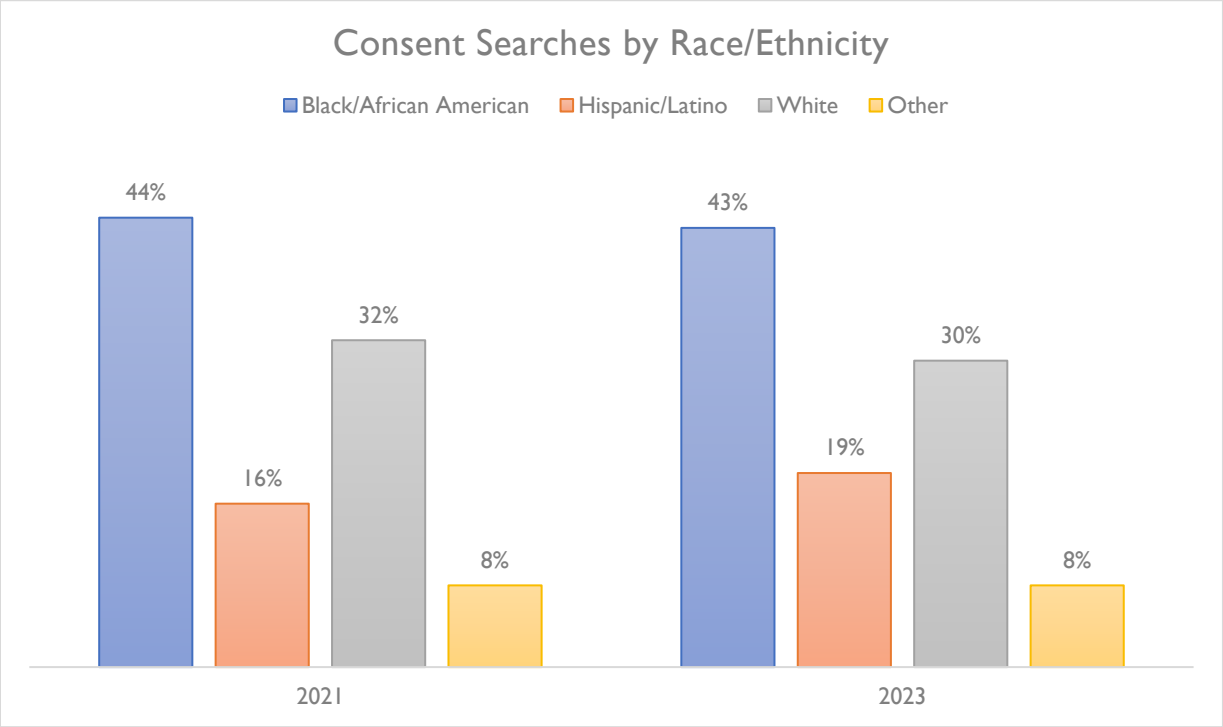
Written consent search forms

The PAB is pleased that this has been implemented (Policy 311.3). An understanding of the implementation process and its effect would be improved by the inclusion of data in the quarterly BPD reports. Dr. Frank Baumgartner and his team (2018) found that in North Carolina, consent searches declined by 75% in cities that required written permission.

PAB analysis of BPD data reveals that the number of consent searches decreased from 188 in 2021, to 123 in 2022, and 69 through the first three quarters of 2023. While the number of consent searches has gone down since the introduction of written consent forms, racial disparities in these discretionary searches remain high. In 2021, 44% of consent searches were of Black individuals, 32% were of White individuals, and 16% were of Latinos. Two years later, the respective percentages were 43%, 30%, and 19%. In other words, while the absolute number of people of color undergoing consent searches has decreased with the

implementation of written consent forms, the racial disparities in these discretionary searches have not.[12]

Figure 4 Consent Searches by Race/Ethnicity



Warrantless searches of people on supervised release status

BPD Policy 311.6, as adopted with agreement between the PRC and the BPD and incorporated into the FIP directives, limited warrantless searches of people on supervised release status unless there was reasonable suspicion that they had committed, were committing, or were about to commit a crime. This policy was modified by City Council on July 26, 2022, to make a distinction between people on supervised release for violent crimes (who would be subject

[12] These racial disparities in consent searches are roughly comparable to the disparities in all searches. As we saw above, for the period 2021 through the first three quarters of 2023, there were 2507 searches, with 47% of these searches Black people, 32% White people and 13% Latinos.
Source: https://berkeleyca.gov/sites/default/files/documents/2023-04-11_Item_25_Referral_100%2C000_to_the June%2C 2023.pdf

to warrantless searches) as opposed to non-violent crimes (for whom reasonable suspicion would be required for a search).

The Department under Chief Greenwood had considered the violent/non-violent distinction a challenging one to make in practice and recommended the "reasonable suspicion" standard for all searches of people on supervised release. Have officers found it difficult to implement the "violent"/"non-violent" distinction as Chief Greenwood had suggested? What is the impact of this policy revision on numbers of, and racial disparities in, arrests and searches of people on probation and parole? Future BPD updates should continue to address what, if any, impact this 2022 change in policy has had on racial disparities.

Since introduction of the 311.6 policy change in 2020, BPD data no longer included "probation or parole search" as a category. This made sense since those searches were no longer permissible (absent reasonable suspicion). However, since the modification in 2022, probation and parole searches (and other supervised release searches) were allowed if the individual was on probation or parole for a violent offense. Therefore, BPD data should once again include these searches in their data.

Profiling by proxy

According to Chief Louis's June 2023 update, the Communications Manual "has been amended to address handling cases involving profiling by proxy." Further, dispatchers "are instructed to be cognizant and screen for profiling by proxy calls." More specifics need to be provided. Exactly what does the "instruction" consist of? What has the effect been on racial disparities in departmental response to calls for service? As detailed in the City Auditor's report cited above, law-enforcement actions are lower in stops initiated by the public than in officer-initiated stops. This suggests that more targeted dispatcher instructions and call-screening for profiling by proxy may be necessary.

Resources on police-civilian encounters.

The PAB is pleased that the business card directive has been fulfilled. That provision was to ensure that business cards with information on how to commend police officers or file misconduct complaints were distributed upon each officer/civilian encounter. However, the body-worn camera footage that the PAB has received in conjunction with individual misconduct complaints does not seem to show any distribution of business cards as directed by Council.

Fire racist officers identified through social media and other media screens

BPD Policy 1029 ("Employee Speech, Expression, and Social Networking") stipulates that employees of the BPD whose speech or expression "tends to compromise or damage the mission, function, or reputation…of the Berkeley Police Department" will be held accountable. Two issues arise here: 1) The FIP recommendation included media scans to ensure consistency with this policy, yet this proactive approach does not seem to have been implemented; 2) The FIP recommendation was that "racist officers identified through social media…" shall be fired. The current Policy 1029 is not specific and requires only "accountability". Thus, it is not clear if this FIP directive has been implemented. One way to move forward on this directive would be to be more specific on what exactly "accountability" means in this context and what preliminary steps would be taken prior to an officer's termination.

Require regular analysis of BPD stop, search, and use of force data

As noted in the BPD quarterly reports, a Transparency Hub was developed that provides raw data through an Open Data Portal. While this allows members of the public who have the time and ability to analyze the data, the BPD's Data Analyst should provide more detailed analysis of these data with a focus on racial disparities, as we have done in this report.

Make resources on police-civilian encounters publicly available such as through RAHEEM.org

This Council directive is mentioned in the BPD quarterly updates, but no information is provided regarding its implementation status.

Conclusions and Recommendations

Racial disparities in stops, arrest, and searches remain high, and there is little public accountability for the overall results of the FIP effort due to a lack of statistical reporting or outcome analysis in BPD quarterly updates. While some policy changes have been implemented by the BPD, modification of these changes is needed in some areas. Other FIP recommendations have not been implemented.

The PAB offers the following recommendations for action by BPD, the PAB, and City Council with the goals of improving upon steps that have already been taken, ensuring that no directives remain unfulfilled, and establishing an expectation for future BPD updates to include analysis of racial disparity outcomes.

Recommendations to the Berkeley Police Department

1. Three-prong approach.
    a. Definition of Low-Level Traffic Infractions: A definition consistent with SB 50 should be adopted.
    b. Primary Collision Factors: This prong should specify the mode of the party at fault.
    c. Community Reports: Under the category of "a variety of unsafe driving incidents," policies should be put in place that specify which calls for service will result in law enforcement action. That specification should be derived from an analysis of the 13% of calls from community members that resulted in a citation or arrest, as per the City Auditor's July 2021 report.

d. Community Caretaking: More specificity is needed in this prong, and its components should be based on Berkeley data rather than national statistics, as is done for Prong 1 (Primary Collision Factors). Specifically, the analysis should examine which other factors (non-PCFs) are highly associated with severe and fatal collisions in Berkeley. The open-ended quality of this prong may contribute to more non-safety related stops than is called for in the Council directive. If more specificity is not possible or feasible, this prong should be eliminated.

e. Reporting: Future BPD updates on FIP implementation should include statistical information enabling an analysis of the impact of the three-prong approach on reducing or eliminating stops for low-level offenses—a primary focus of the Council directive—in a manner that supports an overall assessment as well as an understanding of the impact of the approach on reducing racial disparities in traffic stops.

2. Evidence-based definition for stops of criminal suspects.
   a. Establish an evidence-based definition for stops of criminal suspects.
   b. Explain how the precision-based policing, feedback loops, and accountability measures, referenced in BPD FIP implementation updates in relation to this recommendation, address the directive to establish an evidence-based definition for stops of criminal suspects.
3. Enhanced implicit bias training: Ensure that intensive annual training dedicated to the topic of implicit bias is delivered to BPD personnel per the Council's directive.
4. EIS: Pending the deployment of a new Early Intervention and Risk Management system, EIS audits should be focused on officers who are outliers on the variables stipulated in the Department's EIS, with a particular focus on racial disparities in stops, arrests, and searches. A designated PAB Member should serve as an observer in this process, as has been informally

agreed to. Future audit reports should include the scope of what was reviewed and a clear statement of findings, within the confines of officer confidentiality.

5. Written consent searches: Future reporting to council should include the number of consent searches conducted per reporting period and their effect on racial disparities in searches, with a comparison to consent search numbers before implementation.
6. Warrantless searches of people on supervised release: Future FIP updates should identify the impact of the new BPD Policy 311.6 on the numbers of, and racial disparities in, searches and arrests of people on probation and parole.
7. Profiling by proxy: Future BPD updates should specify what instruction dispatchers are given on the topic of profiling by proxy, as well as any impact the instruction and corresponding Communications Manual amendments have had on racial disparities in departmental response to calls for service.
8. Business cards: Ensure that business cards are distributed as mandated by the Council directive.
9. Make resources on police-civilian encounters publicly available, such as through RAHEEM.org.

Recommendations to the Police Accountability Board

1. Scenario-based training: The 2021 Council specifically referred to the PAB oversight of the implementation of a scenario-based training component in the existing officer training required by the California Penal Code. This topic will be agendized for discussion at a future PAB meeting, including the appropriateness of, and ability of, the PAB to oversee departmental training.

2. Crisis Intervention Team (CIT): The 2021 Council item refers to the PAB the acceleration of CIT activity. This will be taken up for discussion in future PAB meetings.

Recommendations to the Berkeley City Council

1. Establish metrics to assess the success of the implementation of FIP directives. Currently the BPD appears to be focused entirely on policy, and on tests of bias, as evidenced in its recently published Annual Report. The PAB has focused instead on outcomes, addressing the key question of whether racial disparities have decreased in any of the areas subject to FIP directives.
2. Eliminate reporting requirements for recommendations that the PAB ascertains have been fully implemented.
3. Require BPD to report biannually on:
    a. Traffic stops by each prong of their 3-prong framework and by race within each prong.
    b. Stop, search, and arrest data by probation/parole status and race.
    c. Calls for service by the race of the reporter and reportee.

Ensure that employees of the BPD whose speech or behavior is inconsistent with fair and impartial policing be held accountable.

Appendix

Appendix 1. Berkeley Police Department 2024 Annual Report "Tests for Bias"

The PAB has several concerns about the adequacy of the three tests conducted for stops and searches (use of force is not part of the FIP focus): "At-fault collision demographics": "yield rate analysis"; and, the "veil of darkness".

1. The at-fault collision test is the most problematic of these analyses. This BPD test purports to compare the parties at fault in collisions, by race, to the rate of police stops by race. Because they find that the proportion of stops for each race is approximately the same as the proportion of each race at fault in collisions, they conclude that police stops are "race-neutral". In other words, while not citing disparity statistics, the BPD implies that the racial disparity in stops is the result of Black motorists' more dangerous driving.

   There are numerous problems with that analysis, including the following:

   - In the interest of focusing on "discretionary stops," which as they note are most likely to involve potential bias, the BPD only includes in their analysis stops that were officer-initiated. Curiously, however, it omits the most discretionary stops of all—those based on equipment violations, registration or license plate infractions and other such low-level offenses that make up 19% of all vehicle stops.
   - The "at-fault collision" side of this equation is also problematic. Only those collisions for which the police were called to the scene or were nearby when the accident happened, and/or for which a written police report was filed, are included in the analysis. Personal experience suggests that many if not most collisions are not reported to the police.
2. The BPD's yield rate analysis cites the 2024 RIPA Annual Report that shows there were no statistically significant differences in rates of discovery of contraband in searches of Black people and White people in Berkeley. This is an important RIPA finding. It must be qualified, however, by the RIPA Board's advice on interpreting the finding. As the RIPA Board notes, when search rates are higher and discovery

rates lower for Black people than for white people, it can be concluded that racial bias was involved in the searches. However, "[w]hen these statistics do not move in opposite directions, it is more difficult to determine whether disparate treatment is present." (RIPA *2024 Annual Report*; Appendix B.3, p. 46).

3. The veil of darkness test is an industry-wide standard for testing racial bias. It assumes that if racial bias exists in vehicle stops, people of color would be more likely to be stopped during the day than at night when it is presumably less possible to discern motorists' race. The BPD analysis compares vehicle stops at the "inter-twilight" period around 6:30 pm during daylight savings time (when it is light) and standard time (when it is dark). The BPD finding is that the stop rates by race are comparable in the light and in the dark, and that "this is what we would expect to see if those stops were being made based on race-neutral factors." This is quite different from the finding of Stanford researchers who analyzed 95 million traffic stops across the United States using the veil of darkness test and found statistically significant racial disparities[13]. The BPD finding for Berkeley is a positive one, but we need more details here. It is possible that stops occurring in the inter-twilight period in Berkeley in one year would not be sufficient in number to draw statistically valid inferences. Finally, while the veil of darkness is an industry-standard, several cautions must be applied. As numerous scientists have explained, and the BPD report acknowledges, both street lighting and car profiling may skew results.

   In sum, we cannot confidently conclude from these BPD tests for bias that it is not a factor in racial disparities in BPD vehicle stops and searches. More rigorous studies would be required to untangle the web of socio-economic, cultural, institutional, and individual factors—and their interactions—that produce these racial disparities.

[13] https://www.nature.com/articles/s41562-020-0858-1

Appendix 2. PAB Data Workbook

To access a copy of the Data Workbook, please use the following link:

https://berkeleyca.gov/sites/default/files/documents/PAB%20Data%20Workbook_2024%20FIP%20Implementation%20Report%20.xlsx

Attachment List

1. Mayor's Working Group on Fair and Impartial Policing. Proposal to City Council. February 23, 2021.
2. Working Group Recommendations Passed by Council. February 23, 2021
3. Summary of BPD Quarterly Updates on Fair and Impartial Policing Implementation
4. BPD Three-Pronged Approach to Traffic Enforcement
5. Berkeley Police Department Memorandum Titled: "PD Response to PAB FIP Implementation Report"

Attachment 1: Mayor's Working Group on Fair and Impartial Policing. Proposal to City Council. February 23, 2021

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The Mayor's Working Group on Fair and Impartial Policing Policy Proposals

Developing and implementing reforms that will effectively reduce existing racial disparities requires changes at several levels. The following recommendations include setting new policy, updating institutional structures, and mandating individual accountability. Their implementation and ongoing effectiveness require supportive leadership, transparency and police accountability.

Executive Summary. Mayor's Working Group on Fair and Impartial Policing (hereafter, "the working group") focused on reducing racial disparities in stops and searches and improving community relationships damaged by the racially disparate practices in stops and searches.

This report advances the following recommendations for BPD practices:

- Focus on public safety and eliminate stops for low-level offenses not directly impacting public safety.
- Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.
- Institute annual implicit bias training and scenario-based training for California Penal Code 13519.4, prohibiting racial or identity profiling.
- Establish a truly effective Early Intervention System and risk management process to ensure department accountability and identify officers who are outliers in stops, searches, dispositions, and outcomes.
- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole.
- Require written consent for consent searches.
- Include evaluations of cultural competence in hiring and promotion, and fire officers who have expressed racist attitudes and/or are identified as members of racist groups.

The report also advances these recommendations for the Berkeley City Council and/or the City of Berkeley:

- Hire a consultant to create a plan for monitoring and reporting on the implementation of these recommendations.
- Ensure the creation of a Specialized Care Unit with crisis-response field workers, as included in the recent contract for a community-process to establish an SCU.
- Ensure a robust community engagement process, including annual surveys and community forums
- Require quarterly analysis of stop, search, and use of force data by City Auditor and/or the PRC.
- Adopt and carry out the compliance and accountability system outlined in this document.

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Proposed Actions

Table 1 provides a proposed action for each recommendation in the body and appendices of this draft report.

Action	Recommendations
Direct the City Manager to implement key recommendations, with at minimum, quarterly progress reports to the PAB and/or the Working Group	• Focus traffic stops on safety • Use a clear, evidence-based definition for stops of criminal suspects • Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria • Eliminate stops for low-level offenses • Implement an Early Intervention System (EIS) and a risk-management structure • Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group • Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole • Require written consent for all consent searches • Address Profiling by Proxy (PAB Policy Development, Dispatcher Training) • Fire racist police officers identified through social media and other media screens • Address Profiling by Proxy (Council develop & pass CAREN policy) • Require regular analysis of BPD stop, search, and use of force data • Make resources on police-civilian encounters more publicly available such as RAHEEM.org • Adopt Compliance and Accountability Mechanisms a. Hire consultant to develop implementation plan • For any individual detained, BPD officers shall provide a business card with info on a website similar to RAHEEM and info on complain process with PAB
Refer to be included in the process to reimagine public safety	• The City should create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized and includes a basic report card and quarterly neighborhood check-ins • Conduct a baseline community survey.
Refer to the Police Accountability Board	• Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4 • Require enhanced annual implicit bias training for police • Accelerate Crisis Intervention Team (CIT) activity
Follow-up with PAB and/or Fair and Impartial Working Group	• Evaluate the impact of these proposals on racial disparities in stops and searches, using regular updates to stop and search data • Conduct a regular community survey and annual community forums on Police and Public Safety
Recommendations already underway	• Fund and implement a specialized care unit for mental health crises • Conduct a Capacity Study of police calls and responses and use of officer time outside of case work
Outstanding - No Action Recommended	• Include community member participation and feedback in the hiring process • Include the following for Performance Appraisal Reports

Reducing Disparities in Vehicle, Pedestrian, and Bicycle Stops & Searches:

1. **Focus traffic stops on safety**

   According to Dr. Frank Baumgartner's 2018 book, *Suspect Citizens*, "Safety stops are those aimed at enforcing the rules of the road to decrease the likelihood of an accident" (pg. 191). The types of stops falling into this traffic safety category may include:

   - Excessive speeding[1]
   - Running a stop sign or stop light
   - Unsafe movement
   - Driving while intoxicated

2. **Use a clear, evidence-based definition for stops of criminal suspects**

   Dr. Baumgartner's analysis[2]reveals that "investigatory stops" (stops that use a minor infraction as a pretext for investigating rather than to prevent or reduce dangerous behavior pgs. 53-55) allow for the most officer discretion and open the possibility of implicit bias or "reliance on cultural heuristics" (pg. 191). Based on analyses of more than 9 million stops, Baumgartner's team found that 47% were investigatory and that they added substantially to the racial disparity statistics. Thus, investigatory stops and stops of criminal suspects shall be restricted to those made because the person and/or vehicle fits a description in relation to a specific crime.[3][4]

   Since the Oakland Police Department (OPD) has implemented evidence-based methods, the number of African American civilians stopped by the OPD has declined Since Oakland Police Department has implemented evidence-based methods, the number of African American civilians stopped has declined from 19,185 in 2017 to 7,346 in 2019, a drop of 62% and a stop disparity rate reduction of almost 60%,[5] with no corresponding increase in crime (Captain Chris Bolton presentation, 7/15/2020).

3. **Use race and ethnicity as relevant factors when determining law enforcement action only when provided as part of a description of a crime and suspect that is credible and relevant to the locality and timeframe of the crime and only in combination with other specific descriptive and physical characteristics.**[6,7]

   Specific descriptive and physical characteristics may include, for example: the gender, age, height, weight, clothing, tattoos and piercings of the suspect, the make and model of the car, and the time and location of the crime. Simple race and ethnicity alone are not

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[1] https://www.idrivesafely.com/dmv/california/laws/traffic-tickets-and-violations/, https://www.martenslawfirm.com/blog/2015/november/what-is-excessive-speeding-/
[2] *Suspect Citizens*, pp. 190-192
[3] Eberhardt, J. L. (2016). *Strategies for change: Research initiatives and recommendations to improve police-community relations in Oakland, Calif.* Stanford University
[4] This definition was created by Dr. Jennifer Eberhardt in collaboration with the Oakland Police Department.
[5] This is the percentage of African American stops within all discretionary non-intel led stops made by Police Area 2 officers fell from 76% in September 2017 to 31% in September 2018
[6] Southern Poverty Law Center, 10 Best Practices for Writing Policies Against Racial Profiling
[7] CA Penal Code

satisfactory as bases for reasonable suspicion under the law, and amount to racial profiling.

4. Eliminate stops for low-level offenses

According to the presentation to the Working Group by Captain Bolton of the OPD, Oakland significantly reduced stops for these low-level, non-public safety related offenses, resulting in a reduction in the number of African Americans being stopped and a reduced stop-disparity rate, with no effect on crime rates (homicides and injury shootings went down during the same period). There is often overlap between "investigatory stops" and "stops for low-level offenses," as the latter may be used as a pretext for investigation. The types of stops falling into these categories may include:

- Equipment violations
- Not wearing a seat belt
- Improper use of high beams
- Violating a regulation (e.g. expired license tags)
- Stop purposes recorded as "other"

5. Implement an Early Intervention System (EIS) and a risk-management structure

These measures to ensure individual accountability have operated successfully in Oakland and many other localities for some time. They involve identifying officer outliers in stops, searches, and use of force and their outcomes and examining the reasons for racial disparities. Existing software programs to assist BPD in implementing an EIS could be utilized or BPD can build its own system.

These programs operate to identify officers who are a danger either to themselves or to the public. They are referred to as "risk management" systems because they help limit the financial liability of the City and hence its taxpayers. They may address a broad range of concerns, but in this document, we only consider their use with regard to racial disparities. Elements of this process include the following steps:

a. Evaluate and assess stop incidents for legality and enforcement yield.
b. Analyze data to determine whether racial disparities are generalized across the force or are concentrated in a smaller subset of outlier officers or squads/groups of officers. To the extent that the problem is generalized across the department, supervisors as well as line officers should be re-trained and monitored, and department recruitment, training, and structure should be reviewed. In addition, department policy should be examined for their impacts.
c. Where disparities are concentrated in an individual or a group of officers, with no race-neutral legitimate evidence for this behavior in specific cases, initiate an investigation to determine the cause for the disparity. Evaluate whether there are identifiable causes contributing to racially disparate stop rates and high or low rates of resulting enforcement actions exhibited by outlying officers. Determine and address any trends and patterns among officers with disparate stop rates. In the risk management process, the responsible personnel in the chain of

command reviews and discusses the available information about the subject officer and the officer's current behavior.

d. Absent a satisfactory explanation for racially disparate behavior, monitor the officer.. Options for the supervisor in these cases include reviewing additional body-worn camera footage, supervisor ride-alongs, and other forms of monitoring. Further escalation to intervention, if necessary, may include a higher form of supervision, with even closer oversight. If performance fails to improve, command should consider other options including breaking up departmental units, transfer of officers to other responsibilities, etc. The goal of this process is to achieve trust and better community relations between the department as a whole and all the people in Berkeley. Formal discipline is always a last resort unless there are violations of Department General Orders, in which case this becomes an IAB matter.
e. Identify officers who may have problems affecting their ability to make appropriate judgments, and monitor and reduce time pressures, stress and fatigue on officers.
f. An outside observer from the PRC shall sit in on the risk management and/or EIS program. Reports from these meetings, or other accurate statistical summary, can be given to the commission without identifying any officers' names.
g. Report the results of this data analysis quarterly.

6. **Immediately release the following data to the Working Group**:
    a. All data given to the Center for Policing Equity (CPE) - This data includes:
        i. Calls for Service (January 1, 2012 - December 2016)
        ii. Use of Force Data (January 1, 2012 - December 31, 2016)
        iii. Crime Report Data (January 1, 2012 - December 31, 2016)
    b. STOP DATA - this data shall include information on "call type," similar to the data used by the Center for Policing Equity. The timeframe would be January 1, 2012 to present.
    c. USE OF FORCE DATA - This data was used in the analysis presented in the CPE report. Along with the CPE data, it would be helpful to have more recent Use of Force data. The timeframe would be January 1, 2012 to present.
    d. DEIDENTIFIED STOP & ARREST DATA - To determine if there are any problematic patterns among certain officers, or perhaps pairs of officers, data that we can be attached to anonymized individuals. The timeframe for this data would be January 1, 2012 to present.
    e. ADDITIONAL ARREST DATA - Currently, the Open Data Portal posts arrest data from January 1, 2015. The timeframe for this data would be January 1, 2012 to present day.
    f. ADDITIONAL CALLS FOR SERVICE - Currently, Calls for Service data are posted for the last 180 days. The timeframe for this data would be January 1, 2012 to present.

7. **Limit warrantless searches of individuals on supervised release status, including probation, Post Release Community Supervision (PRCS), and parole, absent evidence of imminent danger**

   California is one of a handful of states that allow high-discretion, suspicionless searches of probationers and parolees. The following was passed by the Police Review Commission on 9/23/2020 and the Working Group endorses this approach:

   "*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. However, under Berkeley policy, 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."

8. **Require written consent for all consent searches**

   Baumgartner (pp. 195-209) and his team found that in cities requiring written consent to perform a consent search, these searches declined by 75%. Since people of color are disproportionately the subjects of these searches, it makes sense that a significant reduction would lead to fewer consent searches for people of color.

   Examining three cities in North Carolina, Baumgartner found that in cities where there was resistance by leadership to the new written-consent policy, there was a substitution effect, such that as consent searches went down, probable cause searches went up. However, the substitution effect seemed to be directly correlated with leadership priorities. The chapter concludes, "We showed that a combination of leadership directives and simple initiatives can alter the relationship a department can have with their community" (pg. 213). *This speaks to the need for clear buy-in from BPD leadership.* The Working Group recommends that the BPD adopt the written consent form used in North Carolina, a copy of which can be found here.

9. **For any individual detained, BPD officers shall provide a business card with the following information on the back**

   a) A website similar to RAHEEM that collects information on police-civilian encounters.[8]
   b) Contact information for filing a complaint with the PRC or its successor, the Police Accountability Board.

[8] https://www.raheem.ai/en/

10. Address Profiling by Proxy[9]

Police should not be dispatched to calls that are motivated by caller bias or malintent, e.g., a claim that someone is suspicious with no corroborating reason.[10] These types of calls harm police-community relationships and undermine the authority of the police. To protect against profiling by proxy the police department shall:

a. work with PRC and other appropriate agencies to formulate a policy that defines and remedies profiling by proxy.
b. enhance Dispatcher training to evaluate calls and add implicit bias training for 911 Dispatch.

An article on profiling by proxy by the Vera Institute of Justice recommends including 911 Dispatch in implicit bias training as a method for reducing issues with profiling by proxy. Anti-bias training will also help Dispatchers become aware of their own biases. For example, when they receive calls about behavior the complainant may dislike but is not illegal—e.g., "too many" black teenagers in the public park.[11]

Hiring & Evaluation

The successful hiring and evaluation of police officers is an important part of creating a healthy and high-functioning police department. The types of people the department hires, and the effective evaluation of police officers are important in determining police department culture. Researchers on policing have repeatedly found that organizational culture is the single most important determinant of officer behavior.[12] Human Resource Management research supports including the evaluation for cultural competency as important in improving agencies. The key components for a high degree of cultural competency are: awareness, attitude, knowledge, skills.

11. Fire racist police officers identified through social media and other media screens

A third-party agency, hired by the City of Berkeley, or agency outside the police department should screen police officers and potential new hires' social media accounts for racist or violent comments, affiliations to racist groups whether public or private, including private groups expressing racist or violent rhetoric.

a. BPD shall immediately fire all identified officers who have engaged in racist or violent actions or commentary online.
b. A social media screen of officer online conduct shall be done annually.

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[9] Profiling by proxy may occur "when an individual calls the police and makes false or ill-informed claims of misconduct about persons they dislike or are biased against—e.g., ethnic and religious minorities, youth, homeless people" (retrieved from The Vera Institute of Justice).

[10] Captain Bolton of the Oakland Police Department made improvements on profiling by proxy using an approach that educated citizens on focusing on criminal behavior instead of suspicion when calling police.

[11] "Avoiding 'profiling by proxy'," Vera Institute of Justice, March 13, 2015, https://www.vera.org/blog/police-perspectives/avoiding-profiling-by-proxy

[12] Organizational Culture and Police Misconduct

Recommendations for Council

Community Engagement and Feedback - When the City of Berkeley pledged to consider reducing funding for the police department by 50%, it also committed itself to shifting to new and alternative methods of community safety. To effectively understand and implement new and alternative safety practices and services, the City of Berkeley must look to its residents for ongoing insight and feedback. The City must collect and utilize regular community feedback to inform the city on community investment priorities including police department policies and practices and future direction. To that end:

12. Address Profiling by Proxy[13]

To protect against profiling by proxy City Council should:

a. Introduce profiling by proxy legislation similar to CAREN Act in SF, which would hold residents accountable for using police in a biased manner.
b. Issue a quarterly review of data from 911 Dispatch, for the PRC or City Auditor to help understand the extent of calls from community members presenting 'biased' suspicions."

13. Require regular analysis of BPD stop, search, and use of force data

The City Auditor and/or PRC shall update the analysis of BPD data completed by the Center for Policing Equity and the PRC and publish the results on the BPD website every quarter. This report shall include stop, search, and use of force analysis.

Ensuring Timely and Effective Implementation:

Since the fall of 2017, the police department has received 37 separate policy or legislative directives to address the racially disparate treatment of City of Berkeley residents. Those directives are the result of extensive and on-going racial disparities in police department stops, searches, and use of force. As of the drafting of this report, at least 30 of those directives remain outstanding with ***no plan*** for implementation.

We respectfully recognize that the role of the Mayor's Working Group on Fair and Impartial Policing is to advise the Berkeley City Council and staff. We recognize that we are not in a position to make final decisions; rather, our role is to offer advice and recommendations to the Council. The Mayor's Working Group is committed to ensuring that the policy recommendations outlined in this proposal are not added to the long list of unaccomplished directives. Therefore, we have included an accountability system with our policy proposal. This accountability system

[13] When an individual calls the police and makes false or ill-informed claims of misconduct about persons they dislike or are biased against—e.g., ethnic and religious minorities, youth, homeless people; retrieved from The Vera Institute of Justice

will ensure that the changes necessary to establish fair and impartial policing and rebuild public trust occur.

Compliance and Accountability Mechanisms:

A. Working in partnership with the Mayor's Working Group on Fair and Impartial Policing and within six months from approval of the proposal (extended for good cause), the City Manager hires an experienced consultant to help draft an implementation plan that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the working group's policy proposal.
    i. If a consultant is not hired within six months from approval of the proposal, the Council should move to item "E" below.
    ii. If a consultant is not hired within six months (extended for good cause), the working group should remain formally organized by the Mayor until a consultant is hired and a plan is approved.
B. The Working Group, Police Chief, and the consultant will create an implementation plan that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the Working Group's policy proposal. Long-term monitoring and assessments will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
C. The implementation plan will be presented to the Berkeley City Council for approval. Once the plan is approved by the City Council, the consultant's work is finished. Long-term monitoring and assessment will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
D. The City Manager and the Berkeley Police Chief should do everything within their power to implement the items outlined in the plan and timeline set forth and approved by City Council.
E. The City Council should set the implementation of this plan as a priority in the annual evaluation of the city manager.
F. If the City Manager does not ensure that the Police Department implements the plan in accordance with the timeline, the City Manager should be held accountable.
    i. In the event of a new Berkeley Police Department Chief: the Mayor's Working Group, on Fair and Impartial Policing, the new Police Chief and the City Manager shall meet and agree upon an updated timeline to monitor, assess, and report on the implementation of the items outlined in the plan approved by City Council.
    ii. In the event of a new City Manager: the Working Group, the Berkeley Police Chief, and the new City Manager shall meet and agree upon an updated timeline to monitor, assess, and report on the implementation of the items outlined in the plan approved by City Council.

If these recommendations are adopted and implemented promptly, we expect that the disparate stop data can show significant improvement in the near future. We expect the City Manager and the Police Chief to implement these programs with enthusiasm and dedication, as they reflect the constitutional imperative of equal protection under the law.

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Appendix A: Additional Recommendations

The following recommendations are also supported by the working group, which suggests referring them to the reimagining process and/or follow-up with the Police Accountability Board and the Fair and Impartial working group. See table 1 for recommended actions.

14. Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4

a. The training must include specific, relevant examples of prohibited actions and how to conduct law enforcement activities in an unbiased manner.[14]
b. MILO and VIRTRA are two such scenario-based training programs[15]
c. An independent observer shall review the training and report back to the PRC or its successor on the quality of the training.

15. Require enhanced annual implicit bias training for police

There is scant scientific evidence that implicit bias training works to change implicit biases over the long-term. However, agency-wide, enhanced, and well-executed training that occurs on a regular basis could have a positive effect on the cultural environment of the police department and on expectations for behavior. Regular, required implicit bias training provides an expression of institutional support for fairness, which is important in improving relationships across groups[16]and improving agency culture.

a. Officers should receive intensive anti-racism and implicit bias training as part of their core instruction in the first 90 days of employment, and an annual 'refresher' course.
b. An independent observer shall attend the training and report back to the PRC on the quality of the training.

16. Accelerate Crisis Intervention Team (CIT) activity

a) Require 40 hours of CIT training in the first year of employment.
b) Collect data on CIT calls to allow BPD to make informed decisions about staffing and deployment so that a CIT officer is available for all shifts in all districts to respond to every CIT call.
c) Develop a CIT reporting system so that each deployment of a CIT officer is well documented. CIT officers should submit narrative reports of their interactions with persons in crisis so the appropriateness of the response can be evaluated in an after-action analysis.
d) Implement an assessment program to evaluate the efficacy of the CIT program as a whole and the performance of individual CIT officers. A portion of a CIT officer's performance review should address skill and effectiveness in CIT situations.

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[14] CA Penal Code
[15] MILO in an Oakland setting
[16] Allport, G. W., Clark, K., & Pettigrew, T. (1954). The nature of prejudice.

17. **The City of Berkeley should conduct annual community forums on Police and Public Safety:**
    a. Identifying community-based leaders and impacted individuals for control of the envisioning process.
    b. Placing the process under the Office of the Mayor, not the City Manager. Upon establishment of the Police Accountability Board, place the process under the auspices of the Police Accountability Board.
    c. Including the creation of community-based measures of safety as part of the first round of the envisioning process.[17]
    d. Once community-based measures of safety are created, including these measures in the annual community survey (see item 17) and publishing the data as per item 17b.

18. **The City of Berkeley should conduct an annual community survey**.
    Sample surveys include the Milwaukee survey and the Dallas survey.
    a. Data collected should be shared publicly via the City of Berkeley website or an online community dashboard.

19. **The City should create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized and includes:**
    a. A basic "Report Card," in collaboration with the PRC or its successor the Police Accountability Board, based on community feedback for each reform. This will enable the Department to take the 'community's temperature' on how the implementation of the reforms are being perceived by the public.
    b. Quarterly neighborhood 'check ins' for relationship building .

20. **Conduct a Capacity Study**
    a. Release data including but not limited to 911 dispatch calls, BPD stops and interventions, written reports, and body-worn camera footage to the City Auditor and/or PRC for analysis.[18]
    b. Conduct an audit on officer down time to determine the percentage of police time spent outside of responding to calls for service and how police officers spend this time. Share this information with the City Auditor and/or PRC for analysis for use in the capacity study.
    c. Conduct an audit of police overtime to determine the factors that contribute to the use of overtime .

[17] This process should follow or be modeled after the Everyday Peace Indicators process
[18] This study could be time-limited and would not have to be a comprehensive analysis of internal data; a random sample done correctly would suffice to determine how best to restructure the response to a variety of problematic situations.

d. Identify what percentage of calls for service require a unique police response and what percentage of calls could be better served by an alternative response with the goal to focus police response on issues that can best be responded to by police officers.
e. These data can also assist in identifying calls suspected of profiling by proxy.

21. Fund and implement a specialized care unit for mental health crises

Fully fund and implement the specialized care unit as swiftly as possible in order to remove mental health and homeless encounters from the responsibility of BPD. Research has found that individuals with mental illness are at a higher risk of police stops, use of force,[19] and a fatal police encounter.[20] These disparities increase for Black and Latinx individuals. Specialized mental health crisis units are a safer option for those experiencing a mental health crisis than a police response and a more cost-effective use of public resources.[21] The Council's July 14, 2020 decision to create a Specialized Care Unit will better serve people in Berkeley experiencing a mental health crisis. The Working Group supports transitioning away from police as first responders to 911 calls related to mental health and towards trained, unarmed mental health first responders.

The Berkeley Community Safety Coalition in collaboration with Councilmember Bartlett are developing a proposal related to a pilot program transitioning away from sworn police as first responders to professional mental health first responders. The Working Group supports this effort.

22. Make resources on police-civilian encounters more publicly available, including:

a. A website similar to RAHEEM that collects information on police-civilian encounters.[22]
b. Contact information for filing a complaint with the PRC or its successor.

23. Evaluate the impact of these proposals on racial disparities in stops and searches, using regular updates to stop and search data

[19] Mental Illness, Police Use of Force, and Citizen Injury

[20] Deaths of people with mental illness during interactions with law enforcement

[21] CAHOOTS Media Guide, 2020

[22] https://www.raheem.ai/en/

Attachment 2: Working Group Recommendations Passed by Council. February 23, 2021

ANNOTATED AGENDA
SPECIAL MEETING OF THE
BERKELEY CITY COUNCIL

Tuesday, February 23, 2021

4:00 P.M.

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI
DISTRICT 2 – TERRY TAPLIN
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/81676274736. 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 or 1-877-853-5257 (Toll Free)** and enter Meeting ID: **816 7627 4736**. 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: 4:06 p.m.

Present: Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Kesarwani

Councilmember Kesarwani present at 4:13 p.m.

Action: M/S/C (Arreguin/Wengraf) to adopt a special rule for this meeting to limit public comment to one minute per speaker, with the option to yield time up to a total of four minutes.
Vote: Ayes – Taplin, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent - Kesarwani

Action Calendar – New Business

1. **Report and Recommendations From Mayor's Fair and Impartial Policing Working Group**
From: Mayor Arreguin (Author), Councilmember Harrison (Author)
Recommendation:
1. Accept and acknowledge the report from the Fair and Impartial Working Group (Attachment 1).
2. Direct the City Manager to implement the following recommendations summarized below and detailed in full in Attachment 1, with at minimum, quarterly progress updates to the Police Accountability Board (PAB) and/or the Working Group.
-Focus traffic stops on safety
-Use a clear, evidence-based definition for stops of criminal suspects
-Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
-Eliminate stops for low-level offenses
-Implement an Early Intervention System (EIS) and a risk-management structure
-Immediately release stop, arrest, calls for service and use of force data from 2012 to present to the Working Group
-Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole
-Require written consent for all consent searches
-Address Profiling by Proxy (PAB Policy Development, Dispatcher Training)
-Fire racist police officers identified through social media and other media screens
-Address Profiling by Proxy (Council develop & pass CAREN policy)
-Require regular analysis of BPD stop, search, and use of force data
-Make resources on police-civilian encounters more publicly available such as RAHEEM.org
-Adopt Compliance and Accountability Mechanisms; -Hire consultant to develop implementation plan
-For any individual detained, BPD officers shall provide a business card with info on a website similar to RAHEEM and info on complaint process with PAB
3. Refer the following recommendations summarized below and detailed in full in Attachment 1 to be included in the process to reimagine public safety:

Action Calendar – New Business

-Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins
-Conduct a baseline community survey
4. Refer the following recommendations summarized below and detailed in full in Attachment 1 to the Police Review Commission, to be taken up by the Police Accountability Board when it is established
-Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4
-Require enhanced annual implicit bias training for police
-Accelerate Crisis Intervention Team (CIT) activity
5. Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway:
-Fund and implement a specialized care unit for mental health crises
-Conduct a Capacity Study of police calls and responses and use of officer time outside of case work
6. Refer $50,000 to the FY 2022 budget process for a consultant to develop an implementation plan as described in Attachment 1 and other minor costs the Department may confer
Financial Implications: See report
Contact: Jesse Arreguin, Mayor, (510) 981-7100
Action: 40 speakers. M/S/C (Arreguin/Harrison) to:

1. Accept and acknowledge the report from the Mayor's Fair and Impartial Policing Working Group;
2. Acknowledge and appreciate the work already completed or underway by the City Manager's Office and Police Department to implement policing reforms including:
   - Adoption and implementation of Policy 401, Fair and Impartial Policing
   - Public reporting of stop data on the BPD Open Data Portal
   - Initiation of the Center for Policing Equity study
   - Implementation of the Body Worn Camera Program
   - Early adoption of Racial and Identity Profiling Act (RIPA) data collection and reporting
   - Updates to the Use of Force Policy, Policy 300
   - Development and passage of Measure II to create a new Police Accountability Board
   - Launching of the Public Safety Reimagining process
3. Refer to the City Manager to implement the following recommendations summarized below, with quarterly progress updates to the City Council and Police Review Commission/Police Accountability Board (when established):
   Implement a new evidence-based Traffic Enforcement Model
   - Focusing the basis for traffic stops on safety and not low-level offenses;
   - Reaffirming and clarifying that the Berkeley Police Department will use a clear, evidence-based definition for stops of criminal suspects;
   - Reaffirming and clarifying that the Berkeley Police Department will use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria
   - Minimize or de-emphasize as a lowest priority stops for low-level offenses.

Action Calendar – New Business

Implement Procedural Justice Reforms

- Refer amendments to existing BPD policy and the creation of an Early Intervention System (EIS) related to traffic, bike and pedestrian stops;
- 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;
- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole;
- Address Profiling by Proxy (PAB Policy Development, Dispatcher Training);
- Fire racist police officers identified through social media and other media screens;
- Require regular analysis of BPD stop, search, and use of force data;
- Make resources on police-civilian encounters publicly available such as through RAHEEM.org;
- For any individual detained, BPD officers shall provide a business card with info on the commendation and complaint process with PAB and Berkeley Police Department.

Request that the City Manager report back at a Council Work Session in three months with budget estimates for implementation (to be considered along with the FY 22 budget process), information on legal and operational considerations, and a short-term action plan of recommendations which can be implemented without the hiring of a consultant, and those that will require the assistance of a consultant and additional resources.

Compliance and Accountability Mechanisms

- The City Manager will create an implementation plan with the assistance of a consultant that includes a timeline to monitor, assess, and report on the implementation of the items outlined in the Working Group's policy proposal. Long-term monitoring and assessments will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).
- The implementation plan will be presented to the Berkeley City Council for approval. Once the plan is approved by the City Council, the consultant's work is finished. Long-term monitoring and assessment will be the responsibility of the police oversight body (the PRC or its successor the Police Accountability Board).

4. Refer the following recommendations summarized below to the Reimagine Public Safety process:
   - Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins
   - Conduct a baseline community survey.
5. Refer the following training recommendations summarized below to the Police Review Commission, to be taken up by the Police Accountability Board when it is established, and consider the resources required to implement this expanded training:
   - Include a scenario-based training component in the existing officer training required by California Penal Code 13519.4
   - Require enhanced annual implicit bias training for police
   - Accelerate Crisis Intervention Team (CIT) activity

Action Calendar – New Business

- Refer to the PRC/PAB to consider a departmental policy on requiring written consent for person searches and report back in 6 months.

6. Acknowledge and reaffirm the following recommendations summarized below and detailed in full in Attachment 1 that are already underway and have been completed:
   - BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;
   - Fund and implement a specialized care unit for mental health crises;
   - Conduct a Capacity Study of police calls and responses and use of officer time outside of case work.
7. Refer $50,000 to the FY 2022 budget process for a consultant to assist the City Manager/Police Department in the implementation of these recommendations and other minor costs the Department may confer; and also refer to the FY 2022 budget process a line item for police training for the new evidence-based stop program (costs to be determined by BPD).

Vote: All Ayes.

Adjournment

Action: M/S/C (Robinson/Taplin) to adjourn the meeting.
Vote: All Ayes.

Adjourned at 7:07 p.m.

Communications

- None

Supplemental Communications and Reports 1

- None

Supplemental Communications and Reports 2

Item #1: Report and Recommendations From Mayor's Fair and Impartial Policing Working Group

1. Elizabeth Ferguson

Supplemental Communications and Reports 3

Item #1: Report and Recommendations From Mayor's Fair and Impartial Policing Working Group

2. Material, submitted by Mayor Arreguin
3. Presentation, submitted by the Police Department
4. Janice Schroeder
5. Thomas Luce
6. Ben Gerhardstein, on behalf of Walk Bike Berkeley
7. Diana Bohn
8. Sivan Orr
9. Ali Lafferty

Attachment 3: Summary of BPD Quarterly Updates on Fair and Impartial Policing Implementation

FIP Recommendation	June 2021	Oct 2021	Feb 2022	June 2022	September 2022	March 2023	June 2023	October 2023
Implement a new evidence-based traffic enforcement model: minimize or de-emphasize as a lowest priority stops for low-level offenses	A working group (wg) has been established consisting of employees working in every division of BPD and a representative of the BPA leadership. The wg is tasked with identifying what low-level offenses are applicable while balancing the necessity of traffic safety and the Berkely Vision Zero initiative. The wg will present recommended policy language as well as analysis of risk or unintended outcomes no later than Fall 2021.	Officers have been directed to focus less attention on equipment violations and are expected to make investigative stops related to criminal intelligence information. The wg has been working to identify traffic offenses that most impact public safety.	Officers have been provided data regarding primary collision factors and have been directed to enforce those violations. The wg created a three-prong approach that focuses on primary collision factors, community member reports, and community caretaking. Implementation in progress. Training has commenced.	Implementation complete[1]. Officers have been provided data regarding primary collision factors and have been directed to enforce those violations. BPD has implemented and conducted departmental training on the three-prong approach.	Implementation complete. Training on the three-pronged approach has concluded. The Department will continue to review data on traffic offenses that affect community safety.	Same as previous	In addition, this has been formalized as a departmental directive in a Special Order on traffic enforcement.	Same as previous
Use a clear, evidence-based definition for stops	BPD is establishing a precision based policing model that considers	BPD continues to develop and deploy data-	BPD is establishing a precision-based policing model	BPD is establishing a precision-based policing model	Implementation complete. BPD is establishing a precision-based	Same as previous	Same as previous	Same as previous

[1] Reflects BDP-reported status update.

of criminal suspects	data and public safety. Data driven tools that enable close to real-time dashboard tracking of calls for service have been provided to Community Service Bureau and Patrol Watch Commandeers. The goal is to have data-driven approaches to violence prevention programs in real time crime and call analysis for patrol deployment strategies.	driven tools to enhance precision-based policing model. Interviewing for two data analysts and continuing to build data dashboard.	that considers data and public safety. Data driven tools that enable real-time dashboard tracking (close to real time) have been provided to Patrol Watch Commanders. Exploring feasibility of a system that employs a feedback loop to provide information back to the Community Services Bureau to support accountability. Filled one of two data analyst positions.	that considers data and public safety. Data driven tools that enable real-time dashboard tracking (close to real time) have been provided to Patrol Watch Commanders. Exploring feasibility of a system that employs a feedback loop.	policing model that considers data and public safety. Data driven tools that enable real-time dashboard tracking (close to real time) have been provided to Patrol Watch Commanders. During this reporting period feedback loop implemented. System provides tracking of calls for service with the goal of call analysis for patrol deployment strategies and allows officers in the field to communicate to the Community Service Bureau.			

Use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria	Implementation complete. Existing law prohibits racial profiling. Policy 401 (Fair and Impartial) explicitly states that officers shall not consider race, ethnicity, national origin, gender….in establishing reasonable suspicion or probable cause…the above policies were reviewed in light of taskforce recommendations and found to affirm and clarify officer responsibility in stops.	Same as previous	Same as previous	Same as previous	Same as previous	Same as previous	Same as previous	Same as previous
Implement an Early Intervention System (EIS) and a risk-management structure		Working on amendments to EWS to include data around traffic, bike, and pedestrian stops.	Amendments are being made to specifically identify additional activity that should be considered when applying the EWS policy. Language	Implementation complete. Updated policy finalized reflecting amendments to include monitoring of stop data for	Implementation complete. Random quarterly audits of officers' stop data, complaints, and use of force, and other		Implementation complete. The City Council referred $100,000 to the June 2023 Budget Process to enter into a contract to	Same as previous

			added to include data around traffic, bicycle and pedestrian stops. The new policy is being reviewed by the police union.	individual officers. The Audits and Inspections Sergeant will also conduct separate and random quarterly audits of officer's stop data, complaints, and use of force incidents and other factors and will share these audits with the PAB.	factors, the results of which will be reported to the Chief of Police.		design and assist with implementing a comprehensive Early Intervention and Risk Management System.	
BPD to provide regular analysis of stop, search, and use of force data		BPD is in the process of expanding the call for service dataset to include all call types and eliminate 180-day time range. BPD has started working with a vendor to update the public facing open data.	In the process of eliminating the 180-day time range that currently exists. In the process of expanding the call for service data set. Expected completion is summer 2022.	Implementation complete. Open Data Portal and Transparency Hub effectuate this recommend-ation.	Implementation complete. The department will regularly analyze stop, search, and use of force data.	Same as previous	Same as previous	Same as previous

Require written consent for all consent searches		Policy to require written consent for all vehicle and residence searching using updated form near completion.	Revised consent form has been created. Implementation in progress. New search and seizure policy being reviewed by union.	Implementation complete.	Same as previous	Same as previous	Same as previous	Same as previous
Limit warrantless searches of individuals on supervised release status such as PRCS, probation, or parole, absent reasonable suspicion			Implementation complete. Policy 311 updated to limit searches on individuals who are on supervised release, absent reasonable suspicion.		Implementation complete. However, In July 2022, City Council approved a revised Policy 311 to allow for searches of those on supervised release for violent crimes.	Same as previous	Same as previous	Same as previous
Address profiling by proxy			Implementation complete. Comms Center Operation Manual amended to address.	Same as previous	Same as previous	Same as previous	Same as previous	Same as previous
Fire racist police officers identified through social media and other media screens		The FIP taskforce identified additional methods for	Implementation complete. Existing policy implements this recommendation	Same as previous	Same as previous	Same as previous	Same as previous	Same as previous

		discovering issues and BPD will work with the taskforce to determine the effectiveness, legality, and usefulness of these tools.						
Make resources on police-civilian encounters more publicly available such as through RAHEEM.org	Not Addressed	NA	NA	NA	NA	NA	NA	NA
For any individual detained BPD officers shall provide a business card			Implementation complete. In May 2021 business cards modified to add info for IA and PAB on back. Officers directed to provide to all detained.	Same as previous	Same as previous	Same as previous	Same as previous	Same as previous
Conduct a capacity study of police calls and responses and use of officer time outside of case work			City Auditor's report included analysis of CAD data. BPD has reviewed and added additional disposition codes to CAD program.	An assessment of overall staffing levels as well as patrol beat specific analysis has been referred to the budget	Same as previous	The City Auditor's report was released which analyzed CAD data. Recommend	The BPD has completed an RFP. Citygate has been selected to conduct the workload study. A contract with	A contract with Citygate will be in place by the end

			One data analyst will be tasked with ongoing analysis of police calls and responses.	process via the Council's direction on Reimaging public safety		ations were provided to the BPD and findings were referred to the Reimagine Public Safety Task Force. BPD has implemented the recommendations and an assessment of overall staffing levels as well as patrol beat specific analysis will be conducted as part o the sworn staffing assessment.	Citygate is expected in the near future.	of August.
Fund and implement a specialized care unit	XX (PAB has not tracked implementation status of this effort)	XX	XX	XX	XX	XX	XX	XX
Create a formalized feedback system to			Implementation in progress. Baseline survey	Initial implementation complete. BPD	Same as previous	Same as previous	Initial implementation complete. To	Same as previous

gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the police review commission or its successor and includes a basic report card and quarterly neighborhood check-ins; conduct a baseline community survey.			completed as part of Reimagining Public Safety Taskforce process.	will be seeking ongoing community input and feedback via the Transparency Hub			support feedback systems, the BPD will be seeking ongoing community input and feedback around reform efforts via the Transparency Hub.	

Attachment 4: BPD Three-Pronged Approach to Traffic Enforcement

Police Transparency

Stop Data | Calls for Service | Use of Force | Crime Data | Community Engagement | Current Trends | Traffic Safety | Open Data Portal

Our Three-Prong Approach to Traffic Safety

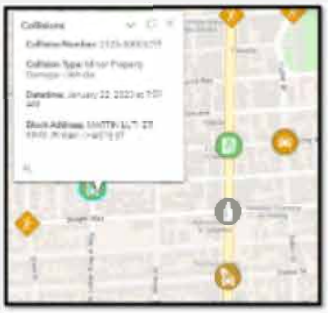
The BPD has reprioritized traffic safety efforts around a three-prong approach that focuses on primary collision factors (PCF), community concerns submitted to the BPD, and our role as community caretakers. Community caretaking functions consider safety violations that aren't always noted as the primary collision factor but can be a significant contributing factor in serious collisions. The BPD collects a range of data related to traffic safety to include calls for service, collision data, and qualitative survey data. The analyses are then used to guide enforcement, education, and prevention strategies.

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

For additional information on the city's Vision Zero efforts please check out their page on the right!



Use the Dashboard below to explore Berkeley collision data.

Vision Zero

Berkeley's Vision Zero strategy aims to eliminate all traffic fatalities and severe injuries while increasing saf...

Explore

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

To submit a traffic safety concern, please fill out the form on the right!

Use the Dashboard below to explore traffic-related Calls for Service (orange lines) and community concerns (orange flag).

Submit a Traffic Concern

Let the Berkeley Police Department Traffic Bureau know about your traffic safety concern in the community

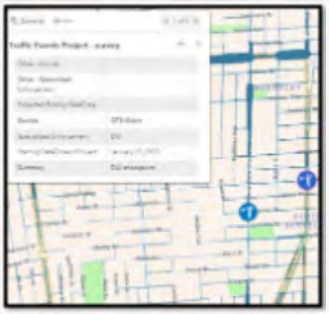
Take Survey

Prong #3 – Community Caretaking

Examples of violations that are safety concerns but not necessarily PCFs

- Distracted Driving (hands free law)
- DUI Investigation
- Seatbelt Violations

For additional information on our traffic stop data, please visit our Stop Data page on the right!



Use the Dashboard below to explore our traffic enforcement efforts (blue lines) in relation to calls/concerns/collisions.

Stop Data

An ArcGIS Hub page used by Law Enforcement agencies to help illustrate to the general public the enforcement...

Explore

Attachment 5: Berkeley Police Department Memorandum Titled: "PD Response to PAB FIP Implementation Report"

Berkeley Police Department Memorandum

From: Chief Jennifer Louis Date: 4/15/2024

To: The Police Accountability Board and the Office of the Director of Police Accountability

Subject: PD Response to PAB FIP Implementation Report

We sincerely thank you for sharing the draft of your Fair and Impartial Policing Implementation Report and for being open to accepting our comments and feedback. The Berkeley Police Department commends the Police Accountability Board for your analysis and efforts to enhance policing standards in our community. Your work plays a vital role in promoting fairness, equity, and impartiality in policing.

BPD is fully committed to collaborating with the PAB as we share the goals of ensuring justice and safety for every community member. We value your partnership as we implement effective reforms and strive for continuous improvement.

Regarding the specific recommendations:

- BPD appreciates the guidance to focus on outcomes, not just policies. We commit to including measures of our impact on racial disparities, such as steps taken to mitigate officer bias, in our quarterly FIP reports. While acknowledging external factors, we will emphasize areas where BPD can drive meaningful change.
- Since implementing our Three-Pronged Traffic Enforcement model, we've decreased equipment violation stops by 21% from 2022-2023 and reduced disparities in all discretionary vehicle stops. The data shows that the percentage of all discretionary equipment violation stops involving Black individuals has decreased from 29.49% in 2021 to 20.93% in 2023, indicating progress in addressing the overrepresentation of Black people in these stops. We are open to further adjustments but believe our current approach needs more time to demonstrate its full impact.
- BPD will continue to exceed the Council's directives for implicit bias training through our comprehensive KIND program, which embeds these principles into trainings on tactics, de-escalation, and communication. This holistic approach reinforces recognizing and mitigating bias across all aspects of our work.
- BPD is actively collaborating with the PAB and the Berkeley Police Association to enhance and refine our Early Intervention System. We are working to ensure our approach reflects best practices and balances the goals of fairness and effectiveness in identifying areas for improvement. The system's design will be informed by comprehensive analysis and guidance from these subject matter experts.
- Our policies mandate strict accountability for any biased conduct by officers. BPD is fully committed to enforcing these standards to maintain the highest levels of integrity and public trust.

Regarding the collision analysis, we want to clarify that it aims to provide a relevant baseline of the demographics of Berkeley drivers, especially those driving dangerously, to enable a fair assessment of officers' decision-making. The data reflects operational realities, not an attribution of driving behaviors

Berkeley Police Department Memorandum

to any racial group. We acknowledge the omission of equipment violations and commit to expanding our analysis to examine these stops in future reports.

We suggest the FIP subcommittee develop a theory of change linking each recommendation to specific factors contributing to disparities (e.g., socioeconomic inequities, institutional practices, individual bias). This will allow us to better assess if reforms are addressing the intended aspects of the disparities.

We also recommend clarifying that the disparity figures compare stop demographics to city demographics, not necessarily differential treatment for identical behaviors, to accurately capture the complex factors shaping police interactions beyond just department policies.

Regarding implementation progress, BPD has engaged on every recommendation, completing all but one. The outstanding recommendation, 'Conduct a capacity study of police calls and responses and use of officer time outside of case work,' is expected to be completed by June, pending the results of an upcoming report from Citygate Associates. Our 2023 annual report reflects this progress and commitment. Beyond the completion of the final recommendation, the department will continue efforts related to fair and impartial policing and will continue to assess and review the efficacy of our efforts.

In conclusion, the Berkeley Police Department reaffirms our unwavering dedication to fair and impartial policing. We deeply value the PAB's crucial role in achieving our shared goals and welcome your continued feedback. BPD is committed to learning, improving, and engaging in open dialogue as we work together to promote equity and justice.

Thank you again for the opportunity to provide input. We look forward to our continued partnership to ensure Berkeley's policing lives up to our city's values.

There is no material for this item.

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The City of Berkeley Public Safety Policy Committee Webpage:

https://berkeleyca.gov/your-government/city-council/council-committees/policy-committee-public-safety