



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

**POLICE ACCOUNTABILITY BOARD
REGULAR MEETING**

**Wednesday, April 13, 2022
7:00 P.M.**

Board Members:

MICHAEL CHANG, CHAIR
NATHAN MIZELL, VICE-CHAIR
KITTY CALAVITA

REGINA HARRIS
JULIE LEFTWICH
DEBORAH LEVINE

JOHN MOORE III
CHERYL OWENS
ISMAIL RAMSEY

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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82237902987>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial 1 669 900 6833 and enter Meeting ID 822 3790 2987. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

AGENDA

- 1. CALL TO ORDER & ROLL CALL (5 minutes)**
- 2. APPROVAL OF AGENDA (5 minutes)**
- 3. PUBLIC COMMENT (TBD)**

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

The Police Accountability Board and Office of the Director of Police Accountability (ODPA) were created to provide independent civilian oversight of the Berkeley Police Department. They review and make recommendations on police department policies, and investigate complaints made by members of the public against police officers. For more information, contact the ODPA.

1947 Center Street, 5th Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

4. **APPROVAL OF MINUTES** (5 minutes)
 - a. Regular meeting of March 23, 2022.
 - b. Special meeting of March 30, 2022.
5. **CHAIR AND BOARD MEMBERS' REPORTS** (5 minutes)

Update from Board member Calavita on Police Chief Search
Update from Board member Mizell on Reimagining Public Safety Task Force.
6. **DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT** (5 minutes)

Status of complaints; other items.
7. **CHIEF OF POLICE'S REPORT** (10 minutes)

Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.
8. **SUBCOMMITTEE REPORTS (discussion and action)** (15 minutes)

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

 - a. Fair & Impartial Policing Implementation – met March 29.
 - b. Director Search – met April 6.
 - c. Regulations – met March 31 and April 12. Next meeting April 21.
 - d. Mental Health Issues (Response and Crisis Stabilization).
 - e. Policy 351, Fixed Surveillance Cameras.
 - f. PAB Budget Proposal – met March 29.
9. **OLD BUSINESS (discussion and action)**
 - a. Review Policy 319, Hate Crimes, as requested by City Council. (30 minutes)
(See materials in Feb.23, 2022 agenda packet, p. 13.)
 - b. Consider ways to contribute to the hiring and selection of the permanent Director of Police Accountability and the Police Accountability Investigator. (10 minutes)
 - c. Approve letter to City Council regarding Police Accountability Board budget and authorize Chair or other Board member to represent the PAB before the Budget Subcommittee. (10 minutes)
From: PAB Budget Proposal Subcommittee
10. **NEW BUSINESS (discussion and action)**
 - a. Request that the Byers Group replace the photographs in the recruitment brochure for the Director of Police Accountability. (10 minutes)

From: Director Search Subcommittee

- b. Review proposed revisions to Early Warning System Policy (General Order E-13 / Policy 1041) and Consent to Search form. (15 minutes)

From: Fair & Impartial Policing Subcommittee

- c. Review proposed changes to Policy 311.6, Warrantless Searches of Individuals on Supervised Release Search Conditions and decide how to respond. (15 minutes)

From: Interim Director

- d. Authorize the Chair and Interim Director to prepare and issue a public statement regarding the unfair practice charge filed by the Berkeley Police Association. (15 minutes)

From: Chair Chang

- e. Consider requesting that the City Council endorse Assembly Bill 2557, Ensuring Transparency in Police Oversight Act. (10 minutes)

From: Interim Director

- f. Discuss how to prioritize the work of the Police Accountability Board and the Director of Police Accountability; and conduct the prioritization process. (15 minutes)

From: Board member Calavita

11. PUBLIC COMMENT (TBD)

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

12. ADJOURNMENT (1 minute)

Communications Disclaimer

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

**Communication Access Information (A.R. 1.12)**

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

SB 343 Disclaimer

Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1947 Center Street, 5th Floor, Berkeley, CA.

Contact the Director of Police Accountability (Board Secretary) at dpa@cityofberkeley.info

**POLICE ACCOUNTABILITY BOARD (PAB)
REGULAR MEETING ATTACHMENTS
APRIL 13, 2022**

<u>MINUTES</u>	
March 23, 2022 Regular Meeting Draft Minutes.	Page 7
March 30, 2022 Special Meeting Draft Minutes.	Page 11
<u>AGENDA-RELATED</u>	
Item 6. – Status of All DPA Complaints 2021-2022 as of 4-4-2022.	Page 13
Item 8. – Police Accountability Board Subcommittee list, 3-17-2022.	Page 15
Item 9.b. – Police Accountability Investigator job description.	Page 17
Item 9.c. – PAB Letter in Support of FY 2023 & 2024 Budget.	Page 21
Item 10.a. – Recruitment brochure for Director of Police Accountability.	Page 23
Item 10.b. – Proposed BPD General Order E-13: Early Warning System.	Page 31
Item 10.b. – BPD Consent to Search Form.	Page 35
Item 10.c. – Proposed agenda item: Revise section 311.6, Warrantless Searches of Individuals on Supervised Release Search Conditions.	Page 37
Item 10.c. – Historical background – PRC. Timeline: Asking the probation/parole question; searching those on supervised release.	Page 43
Item 10.e. – Fact Sheet: AB-2557.	Page 45
Item 10.e. – AB-2557.	Page 47
Item 10.f. – PAB // ODPA current and pending items.	Page 53
<u>COMMUNICATIONS</u>	
3-30-2022 Memo from PAB Chairperson to Councilmembers re Surveillance Technology Use Policy for Automated License Plate Readers – April 26, 2022 City Council meeting.	Page 55
4-6-2022 Memo from PAB Chairperson to Interim Police Chief re Police Equipment and Community Safety Ordinance Impact Statements.	Page 57

From 9-23-2020 PRC approved minutes, Item 10.a., Motion to forward to the City Council for their consideration the following exception for use of tear gas during SRT operations: 303.6 Tear Gas Guidelines.	Page 61
Assembly Bill No. 48, Chapter 404. An act to amend Section 12525.2 of the Government Code, and to add Sections 13652 and 13652.1 to the Penal Code, relating to law enforcement.	Page 63
3-24-2022 Email from Interim Police Chief to the Director of Police Accountability re Sharing some data we recently pulled.	Page 69
3-24-2022 Email from Interim Police Chief to the Director of Police Accountability re Correct Consent form.	Page 71
3-25-2022 Memo from the City Manager to the Councilmembers re Supplemental Materials Related to March 8, 2022 Quarterly Update on Implementation of Fair and Impartial Policing recommendations.	Page 75
4-4-2022 Email to the Board members re Research Participants Needed.	Page 89
Announcement: Addressing Excessive Force and Racial Prejudice in Policing. Monday, April 11, 4 – 5 PM PST.	Page 91
3-21-2022 Letter from the City Attorney to Rockne A. Lucia, Jr. at Rains Lucia Stern St. Phalle & Silver, PC, re violations of the Ralph M. Brown Act (Cal. Gov. Code Section 54950 <i>et seq.</i>).	Page 95
3-17-2022 Email from Charles Clarke to All Council re BPD: 36 Bullets in 22 Years.	Page 97
BPD presentation at March 23, 2022 PAB meeting: Principles of Search and Seizure Law.	Page 101



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
MINUTES
(draft)

Wednesday, March 23, 2022, 7:00 P.M.

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

1. CALL TO ORDER & ROLL CALL BY CHAIR CHANG AT 7:01 P.M.

Present: Board Member Michael Chang (Chair)
Board Member Kitty Calavita
Board Member Regina Harris
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member John Moore
Board Member Cheryl Owens
Board Member Ismail Ramsey

Absent: Board Member Nathan Mizell

ODPA Staff: Katherine J. Lee, Interim Director of Police Accountability

BPD Staff: Interim Chief Jen Louis, Lt. Melanie Turner

2. APPROVAL OF AGENDA

Motion to approve the agenda as modified to postpone Item #10.a. regarding the PAB budget.

Moved/Second (Levine/Calavita) Motion Carried by general consent.

3. PUBLIC COMMENT

2 speakers.

4. APPROVAL OF MINUTES

Regular meeting of March 9, 2022.

Motion to approve Regular Meeting Minutes, with striking of second instance of "reported" in Item #7, first sentence.

Moved/Second (Calavita/Leftwich) Motion Carried by general consent.

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Email: dpa@cityofberkeley.info Website: www.cityofberkeley.info/dpa

5. CHAIR AND BOARD MEMBERS' REPORTS

Chair – On March 21, City Attorney issued a letter responding to the BPA attorney's February 8 letter, saying they determined no Brown Act violation occurred.

Police Chief Search – no update.

Reimagining Public Safety Task Force – no update.

6. DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT

The Interim Director reported:

-- No new cases filed since the last meeting. Case status report has been distributed.

-- Staff has identified candidate for temporary investigator they would like to hire. Human Resources to make offer, work out salary and do background. Investigator Norris has postponed his retirement until May 2.

-- Recruitment for permanent Director is open. Applications due April 29.

-- Standing Rules approved by Council March 8 and sent with packet for this meeting.

-- Will process stipends for first quarter of the year at month's end; form for reporting training hours outside of meetings will be re-sent to Board members.

-- Need to set special meeting to consider controlled equipment impact reports. (The Board agreed on March 30.)

-- Berkeley Police Association has filed an unfair practice charge with the Public Employees Relations Board. City Attorney is evaluating.

-- Next regular meeting is April 13; meeting after that is Tuesday, April 26 due to holiday April 27.

-- This year's NACOLE conference will be in Ft. Worth, Texas, Sept. 11-15. Budgeting to send two Board members.

7. CHIEF OF POLICE'S REPORT

Interim Chief Louis reported:

-- Several incidents of fighting at Berkeley High School the past couple days. School Resource Officer is working with BHS and BUSD staff. Extra presence by bike team.

-- Incident at Berkeley Drop-In Center in February when police responded to 911 call of assault by man with a gun, and detained a man who fit description but was BDIC employee. Have met multiple times with BDIC staff, Mayor, City Manager, department heads. Identified next steps, taking incident with negative impact and turning into positive opportunity to establish new relationships.

-- Been working on BPD portion of staff recommendations for reimagining. April 14 Council special meeting for presentations will include BerkDOT, SCU, Dispatch

and overall public safety pieces. Reimagining being taken into account BPD's development of two-year budget. Will come to PAB as part of the budget process.

-- Will send a revised, properly formatted search consent form.

Interim Chief Louis answered questions from Board members.

8. SUBCOMMITTEE REPORTS (discussion and action)

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

- a. Fair & Impartial Policing Implementation – Chair Calavita: met March 16 and maybe next week. Received draft EIS policy and consent form.
- b. Director Search – Chair Levine: Subcommittee's edits to brochure were largely incorporated, but did not see photos before publication.
- c. Regulations – Chair Chang: met March 22; next meeting March 31 at 7:00 p.m. Working very hard to get draft before the PAB.
- d. Mental Health Issues (Policy Complaint #7) -- Chair Levine: Just 2 members and other tasks more urgent, so will inform Mental Health Commission they cannot meet with their subcommittee, but hope to keep communicating.
- e. Policy 351, Fixed Surveillance Cameras – have not met.
- f. PAB Budget Proposal – Chair Owens: met March 15; since then proposed budget has changed, so another meeting before bringing to the PAB.

9. OLD BUSINESS (discussion and action)

- a. Review Policy 319, Hate Crimes, as requested by City Council.
Discussed; to be continued at next meeting.
- b. Consider ways to contribute to the hiring and selection of the permanent Director of Police Accountability and the Police Accountability Investigator search.
Discussed; to be continued at next meeting.

10. NEW BUSINESS (discussion and action)

- a. Approve letter to City Council regarding Police Accountability Board budget.
Postponed to the next meeting.
- b. Training: Constitutional and case law regarding searches, detentions, and arrests.
Lt. Dave Lindenau and Sgt. Joe Ledoux gave a presentation and answered questions from the Board.

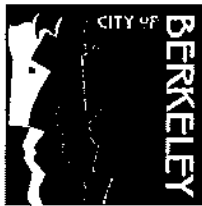
11. PUBLIC COMMENT

2 speakers.

12. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Harris/Owens) By general consent, the meeting was adjourned at 9:49 p.m.



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
SPECIAL MEETING
MINUTES
(draft)

Wednesday, March 30, 2022, 7:00 P.M.

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

1. CALL TO ORDER & ROLL CALL BY CHAIR CHANG AT 7:01 P.M.

Present: Board Member Michael Chang (Chair)
Board Member Nathan Mizell (Vice-Chair)
Board Member Kitty Calavita
Board Member Regina Harris
Board Member Deborah Levine
Board Member John Moore
Board Member Cheryl Owens
Board Member Ismail Ramsey

Absent: Board Member Juliet Leftwich

ODPA Staff: Katherine J. Lee, Interim Director of Police Accountability

2. PUBLIC COMMENT

3 speakers.

3. OLD BUSINESS (discussion and action)

Review Police Equipment & Community Safety Ordinance Impact Statements
(Continued from March 9, 2022 Regular Meeting)

Motion to suspend the rules to allow John Lindsay-Poland to be present to answer questions from Board members.

Moved/Second (Mizell/Moore) **Motion Carried by general consent.**

Motion to submit a letter to the Berkeley Police Department that requests compliance with AB 481, AB 48, the local ordinance [BMC Chapter 2.100], and federal law; recommend consulting with the City Attorney's Office to

ensure compliance; letter to include specific examples of lack of compliance; request the inclusion of best practices; point out the requirement pertaining to mutual aid; and request that the Council item be sent to the PAB simultaneous with submission to the City Clerk.

Moved/Second (Owens/Ramsey) Motion Carried.

Ayes: Calavita, Chang, Harris, Levine, Mizell, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: Leftwich

The Board discussed examples of Impact Statements and Use Policies not in compliance to be cited in the letter.

4. PUBLIC COMMENT

2 speakers.

5. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Ramsey/Owens) By general consent, the meeting was adjourned at 9:28 p.m.

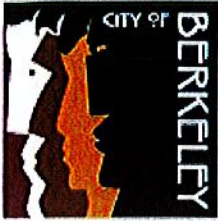
STATUS OF ALL DPA COMPLAINTS 2021 – 2022
As of 4/4/2022

Case#	Filed Date	F&R to PAB	PAB Hearing	F&R to Chief	Chief's Tentative or Final Decision	DPA Contest to CM	CM Final Decision	240-day Deadline	Status
2483	Mar 2, 2021							TBD	active criminal tolling
2488	Jun 8							Sep 2	awaiting release of BPD records
1	Jul 7	Dec 8	n/a	Jan 12	Jan 19	Jan 28	Feb 25	Mar 4	closed
2	Jul 7	Dec 8	n/a	Dec 17	Dec 27	Jan 6	Feb 7	Mar 4	closed
3	Jul 19	Jan 5	Jan 31	Feb 10	Feb 16	Feb 25	Mar 15	Mar 16	closed
4	Jul 23	Nov 10	n/a	Nov 19	Dec 17	Dec 27	Jan 21	Mar 20	closed
5	Jul 23	Jan 12 (2 officers)	Feb 4	Feb 15	Mar 10	n/a	n/a	Mar 20	closed
5	Jul 23	Jan 12 (1 officer)							Hearing Panel t/b scheduled
6	Jul 16	Feb 23	n/a	Mar 7	Feb 25	n/a	n/a	Mar 13	closed
7	Sep 13								PAB subcommittee
8	Sep 17								closed
9	Sep 21								closed
10	Oct 22								closed
11	Nov 2								closed
12	Nov 12								closed
13	Nov 17								rejected
14	Nov 23								rejected
15	Dec 3								rejected
16	Dec 21								closed
17	Jan 5							Sep 2	awaiting release of BPD records
18	Jan 27								rejected
19	Jan 12							Sep 9	awaiting release of BPD records

NOTES: 1) White: open complaints; Green: closed complaints
2) Complaints 11 through 15 were submitted by the same individual.

**POLICE ACCOUNTABILITY BOARD
SUBCOMMITTEES LIST
3-17-2022**

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21	Calavita Chang Leftwich Owens <u>Public:</u> Kitt Saginor	Chang	Lt. Dan Montgomery
Director Search Formed 8-4-21	Levine Mizell Moore <u>Public:</u> Rivka Polatnick Marc Staton	<u>Co-chairs</u> Levine Moore	
Fair & Impartial Policing Implementation Formed 8-4-21	Calavita Moore Owens Ramsey <u>Public:</u> George Lippman Elliot Halpern Jamie Crook	Calavita	Sgt. Peter Lee
Mental Health Response Formed 11-10-21 Scope expanded 3-9-22	Harris Levine <u>Public:</u> Elena Auerbach		Sgt. Joe LeDoux
Fixed Surveillance Cameras (Policy 351) Formed 2-9-22	Mizell Ramsey		
PAB Budget Formed 2-23-22	Levine Harris Owens	Owens	



Police Accountability Investigator

Class Code:

Bargaining Unit: Unrepresented Classifications

CITY OF BERKELEY
Established Date: Oct 10, 2008
Revision Date: March 7, 2022

SALARY RANGE

\$48.68 - \$58.66 Hourly
\$3,894.40 - \$4,692.80 Biweekly
\$8,437.87 - \$10,167.73 Monthly
\$101,254.40 - \$122,012.80 Annually

DESCRIPTION:

DEFINITION

Under general supervision, investigates complaints against police personnel or regarding police policy or practices; performs related work as assigned.

CLASS CHARACTERISTICS

The responsibilities of this class involve serving as an independent investigator of civilian complaints against members of the Police Department or against police policy or practices and managing/staffing the Hearing Panel process. This class is distinguished from other analytical or investigative classes throughout the City in that the duties relate specifically to the functions of the Office of the Director of Police Accountability (ODPA) and require the training to complete analysis of applicable laws and statutes. It is further distinguished from the Director of Police Accountability in that the latter is the supervisory class of the series, and also provides staff support to the Police Accountability Board (Board).

EXAMPLES OF DUTIES:

The following list of duties is intended only to describe the various types of work that may be performed and the level of technical complexity of the assignment(s) and is not intended to be an all-inclusive list of duties. The omission of a specific duty statement does not exclude it from the position if the work is consistent with the concept of the classification, or is similar or closely related to another duty statement.

1. Investigates complaints regarding individual staff activities or departmental policy concerning the City's Police Department; notifies or confers with the complainant regarding review of policies, procedures and potential outcomes; listens to communication tapes, views body-worn camera video, interviews principals and witnesses and obtains information from associated agencies, City departments and legal staff;

2. Maintains liaison with police command staff and Internal Affairs Bureau staff;
3. Compiles information and prepares detailed analytical report including analysis of police procedures and legal analysis of conduct under applicable statutes, for submission to the full Board and, if needed to a Hearing Panel of the Board;
4. Attends Board meetings as required, providing additional information, policy and legal-related advice as required;
5. Following completed investigations, helps the Director manage and staff all presentations of findings and recommendations to the full Board and to Hearing Panels; also serves as a resource to the Board members and all parties for procedural, analytical, and legal questions.
6. Sends copies of findings and recommendations of the full Board and of Hearing Panels to interested parties;
7. May be asked to maintain ODPa and Board records and reports; maintains statistical records of ODPa and Board work and of complaints made to the ODPa, analyzes trends and makes recommendation for action by the Board;
8. Handles varied requests for information regarding ODPa and Board activities;
9. Performs related duties as assigned.

KNOWLEDGE AND ABILITIES:

Note: The level and scope of the knowledge and skills listed below are related to job duties as defined under Class Characteristics.

Knowledge of:

1. Principles, laws and regulations regarding criminal law and procedure, and the rights and activities of police staff;
2. Analytical principles and techniques;
3. Basic law enforcement principles and practices;
4. Office administrative principles and practices.

Skill in:

1. Obtaining factual information from members of varied ethnic and socio-economic groups;
2. Analyzing complex problems, evaluating alternatives and reaching sound conclusions within legal and procedural constraints;
3. Understanding, researching, interpreting and explaining complex constitutional principles, laws, ordinances and regulations;
4. Maintaining accurate records and files;
5. Establishing and maintaining effective working relationships with those contacted in the course of the work;

Approved by Personnel Board March 7, 2022; not yet released by Human Resources Dept.
6. Preparing clear, concise and effective written reports, correspondence, Council action items and other written materials.

MINIMUM QUALIFICATIONS:

A TYPICAL WAY OF GAINING THE KNOWLEDGE AND SKILLS OUTLINED ABOVE IS:

Equivalent to graduation from a four-year college with major course work in law or public administration or a closely related field and two (2) years of analytical, investigative and/or legal-related experience in a public agency or similar setting. Experience which will have provided a familiarity with law enforcement procedures and a skill in dealing with members of various ethnic and socio-economic groups is desirable. Some legal education and/or training, sufficient to perform the requirements of this classification, is required. Progressively responsible related experience may be substituted for the college course work on a year-for-year basis.

SPECIAL STATUS

This classification is excluded from the competitive service and the incumbent employed will be employed as an "AT-WILL" employee.

OTHER REQUIREMENTS

Must be willing to travel to various locations within and outside the City of Berkeley to meet the program needs and to fulfill the job responsibilities. When driving on City business, maintenance of a valid California driver's license and a satisfactory driving record is required. Must be willing to conduct off-hours interviews and attend off-hours meetings.

PAB Letter in Support of FY 2023 & 2024 Budget

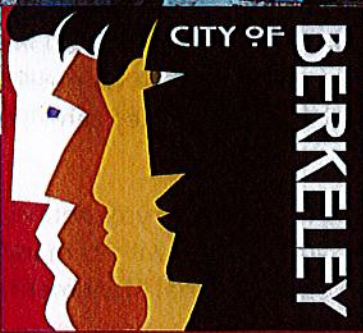
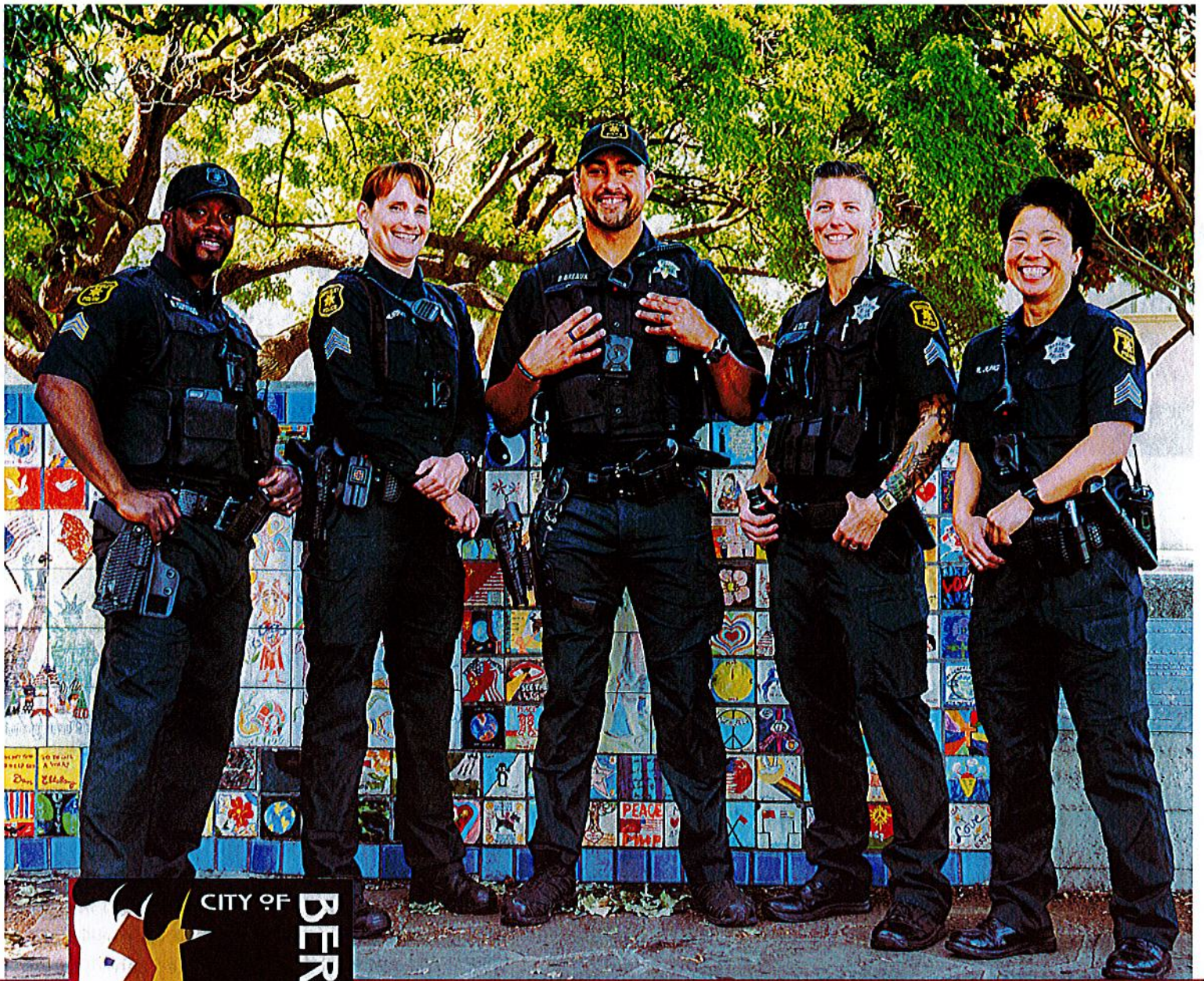
To: Berkeley City Council Members:

Berkeley's newly created Police Accountability Board urges you to support the Berkeley voter's mission of expanded police oversight by voting in favor of our first budget request. This budget includes the addition of a second investigator and a policy analyst to the Department of Police Accountability. This staffing is needed by the Board to accomplish its many and varied responsibilities mandated by the Berkeley Charter's Amendments.

The Board has been reviewing Berkeley Police Department policies, regulations and practices and has been getting advice and training from policing experts from within and from outside the BPD. We depend on research and review of applicable laws, data and policing statistics to evaluate what are best policing practices. We are reviewing complaints which depend on the investigations and findings of the Director of Police Accountability and the Department's one investigator. Their recommendations, in turn, depend upon not only the results of investigations (witness interviews, review of body camera footage, gathering photographic evidence and more) but also the application of their research of laws, statistics and policing practices that contribute to meaningful recommendations.

Without a larger staff, the Director and Department cannot provide the best and most thoroughly investigated and researched recommendations to the Board for its review. Only then can the Board make good decisions and recommendations to the Chief of Police and to you, our City Council.

Board Members have contributed many hours of their time to begin this mission. However, as hard as the Board works, it cannot do all that is mandated without the strong support of the and collaborations with the Department of Police Accountability. The Director, one investigator and skeletal support staff have done a superhuman job since the new Board has begun its work. But it is simply impossible to do everything that is mandated in the time permitted within the deadlines required with only one Director and one Investigator. For that reason, we are requesting the funding for the addition of one investigator and one policy analyst to the Department of Police Accountability. Only with the addition of these personnel can the Boards' mandates be meaningfully fulfilled.



CITY OF BERKELEY

DIRECTOR OF POLICE ACCOUNTABILITY



THE CITY OF BERKELEY

Berkeley is home to a vibrant community of people with diverse backgrounds, interests, and skills and a high level of education. Known for its activism and community involvement, the City of Berkeley covers approximately 10 square miles with a population of 112,000 residents. At the city's center stands one of the world's finest universities, UC Berkeley, where Nobel laureates walk among students and townspeople and the public can attend enriching lectures, panels, and performances. The City's cultural attractions include everything from multiple museums and innovative theater productions to concert halls and cafes offering every style of music.

Berkeley is also known for its excellent public schools, neighborhood parks and walking paths, and recreation activities including summer camp programs and a 1,000-berth marina. The city's food culture, restaurants, and markets are world class. Berkeley is only 12 miles from the shops, restaurants and entertainment of San Francisco, the Bay Area Rapid Transit (BART) train system and the ferry at Oakland's Jack London Square provide easy access between the two. Getting around within Berkeley is easy on foot, by taxi, or via public transportation. The City is served by three BART stations, a network of buses, and the UC Berkeley campus shuttle.

Sheltered by rolling hills and bordered by the San Francisco Bay, Berkeley enjoys a mild climate year-round. Nearby regional and state parks offer many ways to enjoy the beautiful outdoors. San Francisco with its many offerings lies just across the Bay, and famous attractions not far away include Muir Woods National Monument, Point Reyes National Seashore, and the Napa/Sonoma wine country.

CITY GOVERNMENT

The City of Berkeley operates under its own charter with a Council/Manager form of government. The City Council consists of eight Councilmembers, elected by districts for four-year terms, and one Mayor, elected "at large" for a four-year term. The City of Berkeley provides a comprehensive set of services to the community. In addition to the traditional municipal services, the City operates its own Health, Housing & Community Services Department providing public health, mental health and environmental health services to the community. The City operates its own residential and commercial solid waste collection, recycling and disposal service. The City's Parks, Recreation and Waterfront Department offers a number of summer camps, and operates a 1,000 berth marina. The City's adopted FY 2022 budget is \$674 million, of which \$234million is allocated from the General Fund. The City has a workforce of 1,660 employees.

BACKGROUND

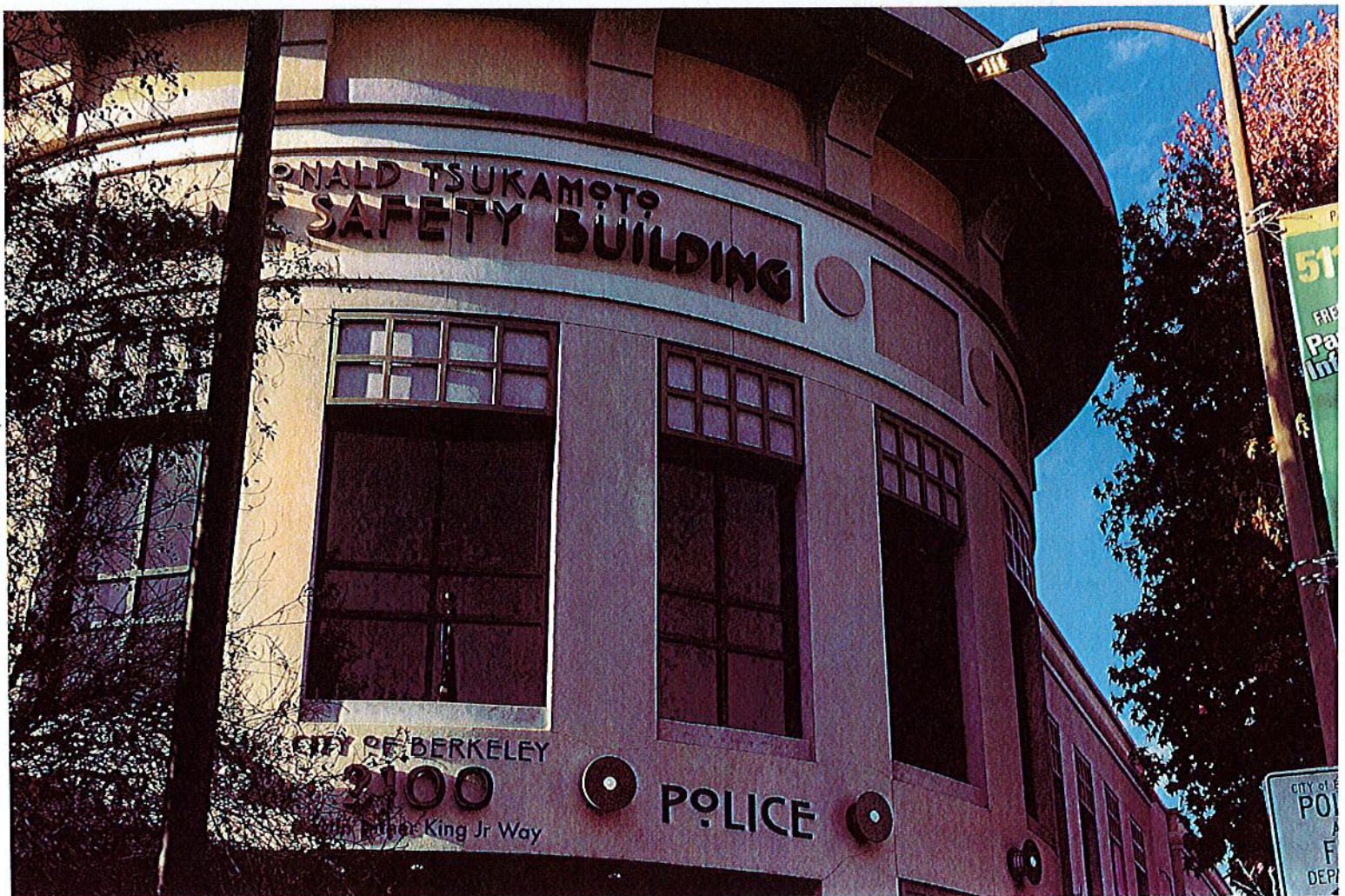
Berkeley has a long tradition of insuring transparent and accountable policing. In 1973, a ballot measure was adopted to establish a Police Review Commission for the community to participate in setting Police Department policies, practices, and procedures and to provide a means for investigation of complaints against sworn employees of the Police Department.

On November 3, 2020, Berkeley voters adopted, by an overwhelming majority (84.6%) Measure II, a Charter Amendment that established a Police Accountability Board, a new oversight body, the Office of the Director of Police Accountability including a new position, the Director of Police Accountability. The Charter establishes the purpose of the Police Accountability Board to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department.

The Board consists of nine (9) commissioners comprising one resident appointed by the entire City Council.

The Police Accountability Board and Office of the Director of Policy Accountability began operating in July 2021. The Office of the Director of Police Accountability oversees an FY22 adopted budget of \$1.14million and a team of 4.

Both the Police Accountability Board and Director of Police Accountability are independent of the City Manager, except for administrative purposes, and report to the Mayor and City Council.



DIRECTOR OF POLICE ACCOUNTABILITY

The Director of Police Accountability reports directly to the City Council, carries out the work of the Police Accountability Board and oversees the day-to-day operations of the Office of the Director of Police Accountability. Amongst other responsibilities as outlined in Measure II, the Director is principally responsible for 1) investigating complaints filed against sworn employees of the Berkeley Police Department to reach an independent finding as to the facts and recommend corrective action where warranted in an impartial and transparent manner and 2) investigating complaints against police department policies (known as “policy” complaints) and helping the Board evaluate police policies and recommend changes to the Council. The Director also works with the Board to recommend and implement policies and procedures of the Office of Director of Police Accountability and Police Accountability Board.

The Director of Police Accountability may also serve as the Secretary to the Police Accountability Board and assists the Board in carrying out their respective duties prescribed herein.

Key priorities to accomplish:

1. Develop relationships with critical stakeholders including: (a) community members and their organizations with particular emphasis on communities of color in order to address their experiences and concerns relative to police oversight; (b) City Council; (c) Berkeley Police Department; (d) the Berkeley Police Association and; (e) the City Manager.
2. Explore, recommend and implement best practices in police accountability and public safety.
3. Develop the regulations of the Board, outline the systemic infrastructure budgetary resources to efficiently manage complaints.
4. Undergo training the members of the Police Accountability Board.
5. Support the overall direction of Berkeley’s Fair and Impartial Policing program adopted by the City Council in February 2021.



Key Responsibilities:

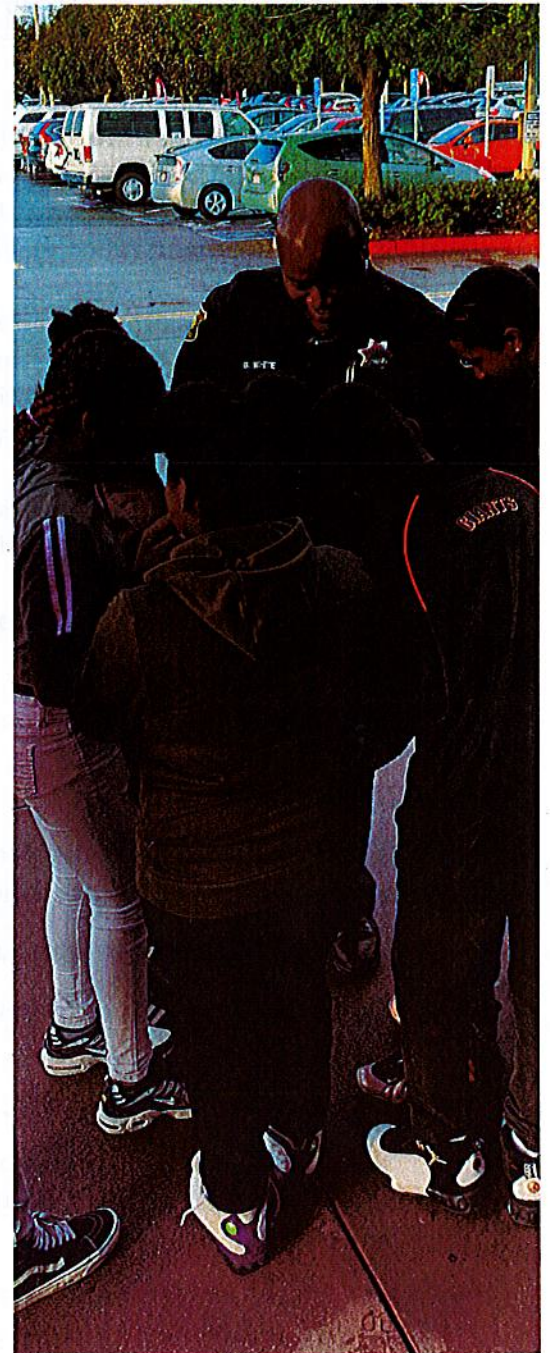
The new Director of the Police Accountability is charged with the responsibility of managing this new organization in accordance with the requirements outlined in the charter. The key responsibilities of the newly imagined organization will be to: manage, oversee, investigate, develop findings and make recommendations regarding personnel or policy actions. The approach will begin with the participation in the initial processing of complaints received by the Police Accountability Board (PAB) or from citizens who witnessed misconduct or other concerns.

The Director will document, review, and analyze all complaints to determine their viability; as official complaints; if merited, oversee investigations into the allegations of the complaints. The Director will bring investigative findings and disciplinary recommendations to the Board, and convene a hearing, if warranted. Should there be an indication, the new Director will develop and recommend new policies and policy positions based on best practices for the PAB, city council and city administration to consider. Finally, the new Director will develop communication options accessible by citizens, police staff, and/or others as needed to identify complaint issues and determine the level of follow-up required.

Separately, there is a monitor, audit, and report responsibility regarding all internal investigations conducted by the Police Department concerning allegations of excessive/unnecessary force or other police practice issues that this department will document and review.

The new Director will represent the Police Accountability Board (PAB) to outside groups and organizations; participate in outside community and professional groups and serve on committees, boards, task forces, and in community activities; attend meetings, conferences, and workshops.

The new Director of Police Accountability will prepare and make presentations to City officials, community members and others as required and provide technical assistance as necessary.



THE IDEAL CANDIDATE

The ideal candidate is a pragmatic, communicative, and collaborative leader with a legal/investigative background and expertise in best police practices. The City of Berkeley envisions the Police Accountability Board as representing best practices regarding police accountability. The new Director will ideally be fluent in data and policy analysis around statistics relevant to crime and police conduct that contributes to the development of an organization that holds the police and the community accountable.

The ideal candidate has strong people skills noted for a willingness to work collaboratively, fairly and with integrity. Management of the organization from an administrative and organizational perspective will be paramount to its success. The new Director will be expected to develop an organization that is transparent, responsive, timely and appropriate in its responses to all individuals.

The successful candidate will be politically astute, but apolitical, with a high level of sophistication and cultural competence in working effectively with diverse stakeholders in highly political environments.

The successful candidate will have experience working within the public sector preferably one that is a complex and a diverse urban environment.

The candidate will:

- Possess a transformational and trustworthy leadership style that supports the mission of the Police Accountability Board and values the community and customer experience;
- Demonstrate a commitment to equity, inclusion, and social justice;
- Genuinely value the voice of the underrepresented victims of injustice while appreciating the difficult work of the police;
- Exhibit steadfast ethical standards, decisive decision-making style, and transparent communication skills;
- Engage effectively with all who have a stake in law enforcement, especially underrepresented communities, complainants, the general public, Berkeley Police Department employees and relevant City Officials;
- Possess the proven ability to convene, collaborate with, and galvanize stakeholders to work together to benefit the community, including a track record of authentic community engagement participatory processes;
- Possess experience working effectively with staff, management, legislative bodies such as the City Council and volunteer commissions to facilitate process improvement changes and modernize internal policy/rules to enhance the effectiveness of policing.

EDUCATION & EXPERIENCE:

Education

Bachelor's degree from an accredited college or university with major course work in criminal justice, criminology, political science, public or business administration or a related field. An appropriate advanced degree is desirable but not required.

Experience

Five years of experience performing professional administrative/investigative or legal/investigative work including substantial involvement with judicial or law enforcement issues.

COMPENSATION & BENEFITS

The current salary range for the position is \$142,344 - \$213,528. The City of Berkeley offers an attractive benefits package.

HOW TO APPLY

The Director of Police Accountability recruitment is being conducted on a national basis by **The Byers Group**. First consideration will be given to applications received by **April 29, 2022**. To apply for this outstanding opportunity, please electronically submit your resume, letter of interest to The Byers Group at: **cob.pab@byersgroupca.com**. The letter of interest should outline why you are interested in joining the City of Berkeley and your relevant accomplishments. Please provide two examples of why you would be a strong candidate and the key attributes you would bring to this position. The position will remain open until filled.

The City of Berkeley is an EEO/ADA Employer that values workforce diversity, inclusion, and equity. The City complies with all Federal, State, and local laws mandating Equal Employment Opportunities. All qualified applicants will be considered in accordance with applicable laws prohibiting discrimination on the basis of race, color, religion, national origin, ancestry, sex, gender, age, veteran status, disability, marital status, hair style and hair texture, gender identity, or sexual orientation.



THE BYERS GROUP
EXECUTIVE SEARCH AND C-SUITE CONSULTING

Confidential inquiries are encouraged and can be directed to:

Ms. Brett Byers
brett@byersgroupca.com
323-403-8279



Ms. Christine Boulware
christine@byersgroupca.com
312-391-6098

BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 17, 2008

GENERAL ORDER E-13

SUBJECT: EARLY WARNING SYSTEM

PURPOSE

- 1 - The purpose of this Order is to establish policy and procedures for an informal performance review and intervention program, the "Early Warning System" (EWS). The program monitors employee performance that may be inconsistent with professional police conduct, including but not limited to racially disparate policing, and cooperatively engages employees to resolve areas of concern. The goal of EWS is early identification of employee performance issues, as well as any generalized patterns across the Department or within particular units. Correction of these issues is primarily through constructive counseling sessions, policy review, and/or training, rather than the formal disciplinary process. The broad purpose is both to achieve employee welfare and to enhance trust between the community and the Department.

Commented [kcl]: The second half of this paragraph is a revision by the Subcommittee.

POLICY

- 2 - All employees shall participate in the EWS program and comply with the guidelines set forth in this Order.
- 3 - Participation in the EWS program shall not be deemed punitive, nor a formal disciplinary process.
 - (a) Notwithstanding the initiation of the EWS process, the Department retains its right and responsibilities with regard to investigation of policy violation and enforcement of employee discipline.

PROCEDURES

- 4 - Employee behavior or performance that is subject to EWS review includes, but is not limited to:
 - (a) Poor attendance and/or abusive use of leave;
 - (b) Multiple formal sustained or not sustained complaints;
 - (c) Multiple informal complaint inquiries;
 - (d) Multiple use of force incidents;
 - (e) Multiple obstructing/resisting arrest incidents;
 - (f) Multiple vehicle collisions;
 - (g) Substandard conduct/performance concerns observed by a superior officer; and,

* Entire text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 17, 2008

GENERAL ORDER E-13

- (h) *Irregular racially disparate stop, search and/or use of force data on pedestrian, bike, and vehicle enforcement, while considering the factors of the assignment (geographical area of the city the officer is working, the specific detail/assignment, and the nature of enforcement).*

Commented [kc2]: The words "irregular racially disparate" replace "irregular demographic"

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

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

- 6 - Personnel assigned to the Internal Affairs Bureau (IAB) shall monitor all formal and informal allegations of employee misconduct received by their office for behavior or performance that is subject to EWS review, and if identified, communicate such information to the Chief of Police.
- 7 - Personnel assigned to the Support Services Division Report Review Detail shall forward to the Chief of Police copies of all reports pertaining to:
- (a) Obstruction/resisting arrests cases (i.e., Penal Code §§148, 69, etc.)
- 8 - Administrative reports regarding use of force shall be forwarded to the Chief of Police as directed in General Order U-2.

Management of Program Records

- 9 - The Office of the Chief of Police shall be responsible for aggregation and administrative management of information, data and records associated with the EWS program.
- (a) The administrative assistant assigned to the Office of the Chief of Police shall be responsible for preparing a quarterly report summarizing information and activities associated with the EWS program for use in administrative review.
- 10 - Information, data and records associated with the EWS program are used for

* Entire text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 17, 2008

GENERAL ORDER E-13

personnel purposes. Accordingly, they are confidential personnel files and not public records.

- 11 - Documents, data and records shall be maintained by the Office of the Chief of Police for a period of two (2) years.
- 12 - Access to EWS records shall be restricted to the supervisor, commander and/or manager involved in the monitoring of a particular employee, subject to the approval of the Chief of Police.
 - (a) An individual employee may be granted access to EWS records that pertain to him/her.

Administrative Review Board

- 13 - The Chief of Police will convene a quarterly Review Board comprised of all Division Commanders to review program records to determine if initiation of the EWS Program is recommended.
- 14 - Upon consideration of the Review Board's recommendation, the Chief of Police may direct an employee to participate in the EWS program.

Initiation of EWS Program

- 15 - Upon the direction of the Chief of Police, an informal counseling meeting will be held that may include:
 - (a) The subject employee;
 - (b) The employee's supervisor;
 - (c) An Internal Affairs Bureau sergeant;
 - (d) The employee's Lieutenant; and,
 - (e) The employee's Division Commander, who shall preside over the meeting.
- 16 - Unless impractical, the counseling meeting shall be held during the employee's regularly scheduled working hours.
 - (a) If the meeting cannot be scheduled during the employee's regularly scheduled working hours, personnel participating while off-duty shall be compensated with compensatory time (minimum time as may be authorized by the employee's MOU) or, with Division Commander approval, allowed to flex an equal amount of time within that same work week.

- 17 - The subject employee may have one fellow employee accompany him/her to the

* Entire text is revised.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: March 17, 2008

GENERAL ORDER E-13

counseling meeting.

- (a) The accompanying employee's presence is allowed to offer general support to the subject employee, not to be an active participant in the counseling meeting.
- 18 - As in general supervisor counseling meetings, the employee shall be informed of the behavioral and/or performance concern(s) at issue, and he/she shall be allowed an opportunity to offer a response.
- 19 - The subject employee may be given information regarding the City of Berkeley Employee Assistance Program.
- 20 - No formal document will be generated referencing this meeting, and the meeting shall not be deemed a punitive or disciplinary proceeding against the employee. There shall be no permanent record of the meeting.

References: General Orders P-26, P-28, R-3 and U-2

(This would be Section 1041.7 in the Lexipol version)

(a) In the case of an individual for whom an EWS process has been initiated, monthly reports shall be comprised to ensure that the original issue is being resolved.

i. If performance fails to improve, further counseling may be ordered and closer monitoring initiated. A record shall be produced to enable tracking of the employee across Departmental units or with different supervisors. Formal discipline is a last resort.

(b) If analysis of data reveals that performance issues and/or racial disparities are generalized across the Department or in specific units, supervisors as well as line officers should undergo additional training and monitoring. In addition, Department recruitment, training, and structure, as well as pertinent policies, should be reviewed. Data will be analyzed quarterly to ensure that the irregular patterns or racial disparities are being adequately addressed.

Commented [kc3]: The sections below are recommendations, added by the Subcommittee

* Entire text is revised.

4

Berkeley Police Department

2100 Martin Luther King Jr. Way

Berkeley, CA 94704

Consent to Search Form

Place your initials on the line that applies to you:

____ I do not consent to a search.

____ I consent to a search as specified below. I have been advised of my right to refuse to consent to this search. I give this consent voluntarily, without any promises made to me, or threats of any kind made against me. I understand that any evidence of a crime may be seized as a result of this search.

If you agree to a search, initial only those items below that you agree to have searched:

____ Person	
____ Vehicle	Plate: _____ VIN: _____ Make: _____ Model: _____
____ Bicycle	Plate: _____ VIN: _____ Make: _____ Model: _____
____ Electronic Device	Type of Device: _____ Make: _____ Model: _____ Serial Number: _____
____ Residence	Address: _____

Signature: _____ Date/Time: _____

Name: _____
Date of Birth: _____ Age: _____ Phone Number: _____
Address: _____

Officer Name: _____ Employee ID#: _____

Division/District/Unit: _____ Contact #: _____

Officer Signature: _____ Date/Time: _____

Berkeley Police Department

2100 Martin Luther King Jr. Way
Berkeley, CA 94704

Formulario De Consentimiento Para Efectuar Un Registro

Persona Que Va a Ser Sometido A Un Registro

IR#:

Persona
Yo, _____, accedo a un registro completa de mi persona, incluyendo toda la propiedad que llevo en mi persona a los Oficiales de Policia.

Propiedad Que Va a Ser Registrada

Vehículo: Placa : _____ VIN: _____
Marca : _____ Modelo: _____

Bicicleta Placa : _____ VIN: _____
Marca: _____ Modelo: _____

Aparato Electrónico Tipo de Aparato: _____
Marca: _____ Modelo: _____
Número de Serie: _____

Clave/iniciar sesión/instrucciones específicas para entrar:

Otra (Describe propiedad):
Yo, _____, dueño, poseo, o tengo autoridad sobre la propiedad descrita arriba y accedo a un registro completa de la propiedad escrita arriba, incluyendo toda la propiedad situada en o adentro de mi vehículo, local, aparato electrónico, u otra propiedad escrita arriba.

Yo he sido informado de mi derecho a negar a dar mi consentimiento. Yo doy este consentimiento voluntariamente, sin promesas dirigidas hacia mí, o amenazas de cualquier tipo hechas en contra de mí. Yo entiendo que toda evidencia de un crimen, objeto(s) o sustancia(s) ilegal(es) puede(n) ser confiscado(s) como el resultado de este registro.

Firma: _____ Fecha/Hora: _____

Marque si autorización es negada

Persona Que Autoriza

Nombre: _____

Fecha de Nacimiento: _____ Edad: _____ Número de teléfono: _____

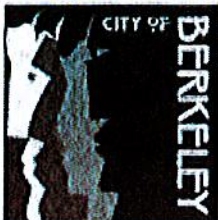
Dirección: _____

Officer Name: _____ Employee ID#: _____

Division/District/Unit: _____ Contact #: _____

Officer Signature: _____ Date/Time: _____

From 3-7-2022 Agenda & Rules Committee meeting.
Referred to Public Safety Policy Committee **02a.40**



Lori Droste
Councilmember, District 8

Consent Calendar
March 22, 2022

To: Honorable Mayor and Members of the City Council

From: Councilmembers Lori Droste (Author) and Terry Taplin (Author)

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

Recommendation

Revise Section 311.6 *Warrantless Searches of Individuals on Supervised Release Search Conditions* of the Berkeley Police Department (BPD) Law Enforcement Services Manual to enable officers of the Berkeley Police Department to conduct detentions and warrantless searches individuals on parole/probation consistent with and supportive of the provisions in the probationer's/parolee's release conditions. The proposed revisions are shown in strikethrough and double-underline below:

Officers shall not detain and search a person on probation or parole solely because the officer is aware of that person's probation or parole status. The decision to detain a person and conduct a probation or parole search, or otherwise enforce probation or parole conditions, should be based upon articulable facts that support a need to enforce and/or confirm compliance with probation or parole conditions ~~should be made, at a minimum, in connection with articulable facts that create a reasonable suspicion that a person may have committed a crime, be committing a crime, or be about to commit a crime. In the conduct of all such detentions and searches, officers shall consciously avoid the application of bias, shall not use such detentions or searches as a means to harass or annoy, and shall not conduct such detentions and searches in a manner that targets or is discriminatory toward any protected class.~~

Problem or Summary Statement

Existing provisions of the BPD Law Enforcement Services Manual do not permit BPD officers to conduct warrantless searches and seizures of probationers/parolees in a manner that would be consistent with the conditions of their release. The restrictiveness of these provisions places

those on probation/parole on nearly equal footing with respect to Fourth Amendment rights as those not on probation/parole. Not only is this circumstance at odds with the nature and purpose of probation/parole, it also prevents officers from effectively implementing the conditions of release imposed by sentencing judges. This limits officers' ability to proactively address recidivism and therefore presents a potentially significant risk to public safety.

Background

Probation/parole is a prison/jail sentence that is suspended on the condition that the offender follow certain prescribed rules and commit no further crimes. As part of these terms, individuals released on probation/parole are often required to waive all or a portion of their Fourth Amendment rights (which would otherwise normally guard against unreasonable search and seizure) in order to secure their release.

Fundamentally, these waivers reflect the fact that for a probationer/parolee, the full term of what would otherwise have been an incarceration is not yet complete. More practically, courts often impose these waivers as a condition of probation/parole because they recognize that both in general and for the individual in question, there may be a higher likelihood of recidivism or additional crimes, which must be guarded against.

When determining the extensiveness/intrusiveness of such Fourth Amendment waivers, sentencing justices will usually consider the nature and severity of the crime. Probation is typically issued with terms that allow for an individual's: 1) person; 2) property; 3) residence; and/or 4) vehicle to be searched at any time. Allowing only for a search of the person only would constitute a "one-way" search clause, whereas allowing for all four would constitute a "four-way" search clause. In extreme cases, an offender's terms may include these terms and an additional term allowing for the search of any/all of the individual's electronic devices, resulting in a "five-way" search clause. This is considered the most complete and intrusive of search terms.

Current Situation and Its Effects

Currently, an individual on probation or parole in Berkeley would be on nearly equal footing as someone who is not on probation or parole when it comes to search and seizure. This would, for example, mean that someone with a history of crimes involving firearms could not have their person or vehicle searched by BPD officers unless there were "articulable facts" that could be given to indicate that the individual had committed, was committing, or would commit a crime. In the case of a crime involving a firearm, such articulable facts would likely come only after a serious threat to public safety had already manifested. Although such risks would rightly not normally be sufficient to justify a search and seizure, in the case of probation and parole, courts typically recognize both a heightened risk and a diminution of Constitutional rights associated with a provisional release.

To give another particularly disturbing example, there is currently a sex offender residing in Berkeley whose crimes were so severe that the judge deemed that a “five-way” search clause was necessary in the offenders probation/parole conditions. Moreover, the court imposed a number of heightened restrictions on the individual in recognition of the seriousness of their offense, including prohibitions on the possession of images of children and on sleeping in any dwelling where children were present. Under current section 311 policies, BPD would generally not be permitted to search the individuals' electronic devices to ensure that the judge's order was being followed.

Criteria Considered

Effectiveness

This policy would apply only to searches and seizures involving individuals on probation or parole; the Fourth Amendment rights of others would not be affected. With regard to individuals on probation or parole, however, BPD would be able to more easily and effectively enforce the conditions of those individuals release, and guard against recidivism.

Fiscal Impacts

By potentially averting crimes, this policy change could serve to reduce policing costs since crime prevention is typically less costly than after-the-fact investigation, remediation, etc. Additionally, by serving to reduce recidivism, this policy could reduce overall costs to the criminal justice system.

Environmental Sustainability

The proposed policy would not result in any appreciable impacts with respect to environmental sustainability.

Equity

Regardless of whether this policy change is adopted, it will remain incumbent upon the Berkeley Police Department to respect the Fourth Amendment rights of individuals who are not on probation or parole; and for those on probation or parole, to limit such intrusions to those that are explicitly noted in the conditions of their release. BPD will also remain responsible for exercising its authority and responsibilities in a manner free of discrimination or bias. Since the practice of this revised policy would be no more or less likely than the existing policy to suffer from the effects of bias, this proposal is not anticipated to have any appreciable negative impacts on equity as it relates to BPD conduct. Additionally, impacts from crime tend to fall disproportionately on lower-income communities and people of color. If the fuller use of court-ordered avenues for search and seizure succeed in averting crimes, this proposed policy change could have the effect of promoting greater equity with respect to impacts from crime.

Attachments

Current Berkeley Police Department Law Enforcement Services Manual

Search and Seizure

311.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Berkeley Police Department personnel to consider when dealing with search and seizure issues.

311.2 POLICY

It is the policy of the Berkeley Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

311.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

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

Search and Seizure

311.4 SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Officers should explain to the person being searched the reason for the search.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- (e) When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:
 1. Another officer or a supervisor should witness the search.
 2. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

311.5 ASKING IF A PERSON IS ON PROBATION OR PAROLE

In an effort to foster community trust, officers should not ask if a person is on probation or parole when a person has satisfactorily identified themselves, either verbally or by presenting identification documents.

Officers may determine probation or parole status through standard records checks conducted in the course of a traffic safety or investigative stop. Officers should only ask when necessary to:

- (a) Protect the safety of others, the person detained, or officers;
- (b) Further a specific law enforcement investigative purpose (for example, sorting out multiple computer returns on a common name);
- (c) To confirm probation and parole status subsequent to a records check.

If an officer needs to ask the question, "Are you on probation or parole?" the officer should do so while treating the person with dignity and respect, and being mindful that people may take offense at the question.

311.6 WARRANTLESS SEARCHES OF INDIVIDUALS ON SUPERVISED RELEASE SEARCH CONDITIONS

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

Search and Seizure

legitimate law enforcement purpose. Searches shall not be conducted in an arbitrary, capricious, or harassing fashion.

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

311.7 DOCUMENTATION

Officers shall document, via MDT disposition, Field Interview, Incident or Case Report, any search of a person, vehicle or location. Officers should consider documenting, as applicable, the following:

- Reason for the search
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
- What, if any, injuries or damage occurred
- All steps taken to secure property
- The results of the search, including a description of any property or contraband seized
- If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.

Historical background - PRC

Timeline: Asking the probation/parole question; searching those on supervised release.

The Subcommittee met 8 times from June 10, 2019 to October 22, 2019.

The PRC then considered these items as follows:

Meeting date	PRC action
11-13-2019	Subcommittee recommendations on policies for questioning and searching those on probation and parole first agendaized. Presentations and discussion; no action.
12-11-2019	PRC approves recommended policy re questioning probationers/parolees.
1-8-2020	Searches of probationers/parolees agendaized, but postponed.
2-5-2020	PRC approves recommended policy re searches of probationers/parolees, with understanding that the BPD is encouraged to return with proposed revisions by the 3-25-2020 meeting.
9-9-2020	BPD proposed revised policies on searches and questioning agendaized, but postponed.
9-23-2020	BPD's proposed policy language on searches revised by PRC and approved.
10-28-2020	BPD's proposed policy language on questioning revised by PRC and approved.
1-27-2021	Request to issue written policy memorializing above agreements discussed; Chief Greenwood said he would return with proposed placement.
2-10-2021	Lt. Lindenau announced the policies had been added to Policy 311, Search and Seizure. Item continued so Commissioners could review.
2-24-2021	Item discussed but continued as Chief Greenwood not present.
3-10-2021	PRC observes that the clause beginning the second paragraph of 311.6, on searches , has been omitted; Capt. Roller explains it is unnecessary. PRC votes to recommend that part of the clause ("However") be reinstated.
3-18-2021	Letter sent to Interim Chief Louis with the PRC's 3-10-21 recommendation.



AB 2557 (Bonta): Ensuring Transparency in Police Oversight Act

Last updated 03.16.2022

SUMMARY

AB 2557 abrogates the California Supreme Court decision in *Copley Press v. Superior Court* (2006), and amends California Penal Code §832.7 to specify records and information obtained from civilian law enforcement oversight agencies are not confidential and are subject to the disclosure requirements of the California Public Records Act.

BACKGROUND

In *Copley Press v. Superior Court* (2006) 39 Cal. 4th 1272, Copley Press Inc., which publishes the *San Diego Tribune* newspaper, sought access to a closed door San Diego County Civil Service Commission (Commission) disciplinary hearing, where a San Diego County deputy sheriff was appealing his termination from the force. Copley Press requested access to the hearing, but the Commission denied the request. After the appeal's completion, Copley Press filed several California Public Records Act [CPRA] requests with the Commission asking for disclosure of any documents filed with, submitted to, or created by the Commission concerning the appeal and any tape recordings of the hearing, but the Commission withheld most of its records. Copley Press then filed an action in court, to obtain these requested records.

Ultimately, *Copley Press v. Superior Court* (2006) held that existing law exempts peace officer records from disclosure under the CPRA. This exemption from disclosure applies even when civilian oversight agencies possess these police officer's records. Prior to this pivotal decision, civilian oversight agencies conducted their investigations of police officer misconduct in an open manner. For example, the Oakland's Citizens' Police Review Board (CPRB), the precursor to the Oakland Police Commission, conducted public hearings and released investigative reports of complaints against police officers.

CURRENT LAW

Existing law provides that government records shall be disclosed to the public, upon request, unless there is a specific reason not to do so. Certain records, including police officer personnel records, are protected from

disclosure. In *Copley Press*, the California Supreme Court determined police officer record disclosure is a policy decision left up to the legislature. Consequently, Senator Skinner authored SB 1421 (Chapter 988, Statutes of 2018) and SB 16 (Chapter 402, Statutes of 2021) which expanded the categories of personnel records of peace officers and custodial officers which are subject to disclosure under the CPRA. These categories include, for example, when an officer discharges a firearm, and sustained findings of certain conduct such as unreasonable or excessive force by police officers.

PROBLEM

After the *Copley Press* decision, civilian law enforcement oversight agencies have had to conduct their hearings largely in private. This lack of transparency creates distrust in the process. The public needs to have access to the investigative records which led to the decision of whether an officer engaged in misconduct. The inability to disclose these records limits the ability for civilian law enforcement oversight agencies to gain public trust.

SOLUTION

AB 2557 would repeal the decision in *Copley Press* and allow civilian law enforcement oversight agencies to operate openly and transparently. Specifically, AB 2557 makes records and information obtained from records of civilian oversight agencies subject to the disclosure requirements of the Public Records Act and no longer considers these records confidential.

SUPPORT

- Coalition for Police Accountability (Co-Sponsor)
- San Francisco District Attorney's Office (Co-Sponsor)
- Block by Block Organizing Network
- Brotherhood of Elders Network
- Latino Taskforce
- Secure Justice
- Wellstone Democratic Renewal Club

CONTACT

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AB 2557 (Bonta): Fact Sheet



AB-2557 Peace officers: records. (2021-2022)

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CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

ASSEMBLY BILL

NO. 2557

Introduced by Assembly Member Mia Bonta

February 17, 2022

An act to amend Section 832.7 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2557, as introduced, Mia Bonta. Peace officers: records.

Existing law, the California Public Records Act, requires a state or local public agency to make public records available for public inspection and to make copies available upon request and payment of a fee, unless the records are exempt from disclosure. Existing law makes peace officer and custodial officer personnel records and specified records maintained by any state or local agency, or information obtained from these records, confidential and prohibits these records from being disclosed in any criminal or civil proceeding except by discovery.

This bill would make records and information obtained from records maintained by an agency or body established by a city, county, city and county, local government entity, state agency, or state department for the purpose of civilian oversight of peace officers subject to disclosure pursuant to the California Public Records Act. The bill would require those records to be redacted only as specified. By increasing duties on local entities, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares that public access to information concerning civilian complaints regarding peace officers, including the records of proceedings of civilian law enforcement review agencies, is crucial to safe and effective law enforcement in the state. It is the intent of the Legislature, in enacting this act, to abrogate the decision in *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, to restore public access to peace officer records, and to restore public access to meetings and hearings that were open to the public prior to the *Copley Press* decision.

SEC. 2. Section 832.7 of the Penal Code is amended to read:

832.7. (a) Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by a state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code. This section does not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or an agency or department that employs those officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office, or the Commission on Peace Officer Standards and Training.

(b) (1) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, the following peace officer or custodial officer personnel records and records maintained by a state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code):

(A) A record relating to the report, investigation, or findings of any of the following:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury.

(iii) A sustained finding involving a complaint that alleges unreasonable or excessive force.

(iv) A sustained finding that an officer failed to intervene against another officer using force that is clearly unreasonable or excessive.

(B) (i) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.

(ii) As used in this subparagraph, "sexual assault" means the commission or attempted initiation of a sexual act with a member of the public by means of force, threat, coercion, extortion, offer of leniency or other official favor, or under the color of authority. For purposes of this subparagraph, the propositioning for or commission of any sexual act while on duty is considered a sexual assault.

(iii) As used in this subparagraph, "member of the public" means any person not employed by the officer's employing agency and includes any participant in a cadet, explorer, or other youth program affiliated with the agency.

(C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency involving dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, false statements, filing false reports, destruction, falsifying, or concealing of evidence, or perjury.

(D) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in conduct including, but not limited to, verbal statements, writings, online posts, recordings, and gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

(E) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that the peace officer made an unlawful arrest or conducted an unlawful search.

(2) Records that are subject to disclosure under clause (iii) or (iv) of subparagraph (A) of paragraph (1), or under subparagraph (D) or (E) of paragraph (1), relating to an incident that occurred before January 1, 2022, shall not be subject to the time limitations in paragraph (8) until January 1, 2023.

(3) Records that shall be released pursuant to this subdivision include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Records that shall be released pursuant to this subdivision also include records relating to an incident specified in paragraph (1) in which the peace officer or custodial officer resigned before the law enforcement agency or oversight agency concluded its investigation into the alleged incident.

(4) A record from a separate and prior investigation or assessment of a separate incident shall not be released unless it is independently subject to disclosure pursuant to this subdivision.

(5) If an investigation or incident involves multiple officers, information about allegations of misconduct by, or the analysis or disposition of an investigation of, an officer shall not be released pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1), unless it relates to a sustained finding regarding that officer that is itself subject to disclosure pursuant to this section. However, factual information about that action of an officer during an incident, or the statements of an officer about an incident, shall be released if they are relevant to a finding against another officer that is subject to release pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1).

(6) An agency shall redact a record disclosed pursuant to this section only for any of the following purposes:

(A) To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers.

(B) To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

(C) To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about possible misconduct and use of force by peace officers and custodial officers.

(D) Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or another person.

(7) Notwithstanding paragraph (6), an agency may redact a record disclosed pursuant to this section, including personal identifying information, where, on the facts of the particular case, the public interest served by not disclosing the information clearly outweighs the public interest served by disclosure of the information.

(8) An agency may withhold a record of an incident described in paragraph (1) that is the subject of an active criminal or administrative investigation, in accordance with any of the following:

(A) (i) During an active criminal investigation, disclosure may be delayed for up to 60 days from the date the misconduct or use of force occurred or until the district attorney determines whether to file criminal charges related to the misconduct or use of force, whichever occurs sooner. If an agency delays disclosure pursuant to this clause, the agency shall provide, in writing, the specific basis for the agency's determination that the interest in delaying disclosure clearly outweighs the public interest in disclosure. This writing shall include the estimated date for disclosure of the withheld information.

(ii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against an officer who engaged in misconduct or used the force. If an agency delays disclosure pursuant to this clause, the agency shall, at 180-day intervals as necessary, provide, in writing, the specific basis for the agency's determination that disclosure could reasonably be expected to interfere with a criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is

resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner.

(iii) After 60 days from the misconduct or use of force, the agency may continue to delay the disclosure of records or information if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the officer who engaged in misconduct or used the force. If an agency delays disclosure under this clause, the agency shall, at 180-day intervals, provide, in writing, the specific basis why disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld information. Information withheld by the agency shall be disclosed when the specific basis for withholding is resolved, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs sooner, unless extraordinary circumstances warrant continued delay due to the ongoing criminal investigation or proceeding. In that case, the agency must show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing criminal investigation or proceeding outweighs the public interest in prompt disclosure of records about misconduct or use of force by peace officers and custodial officers. The agency shall release all information subject to disclosure that does not cause substantial prejudice, including any documents that have otherwise become available.

(iv) In an action to compel disclosure brought pursuant to Section 6258 of the Government Code, an agency may justify delay by filing an application to seal the basis for withholding, in accordance with Rule 2.550 of the California Rules of Court, or any successor rule, if disclosure of the written basis itself would impact a privilege or compromise a pending investigation.

(B) If criminal charges are filed related to the incident in which misconduct occurred or force was used, the agency may delay the disclosure of records or information until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea pursuant to Section 1018.

(C) During an administrative investigation into an incident described in of paragraph (1), the agency may delay the disclosure of records or information until the investigating agency determines whether misconduct or the use of force violated a law or agency policy, but no longer than 180 days after the date of the employing agency's discovery of the misconduct or use of force, or allegation of misconduct or use of force, by a person authorized to initiate an investigation.

(9) A record of a complaint, or the investigations, findings, or dispositions of that complaint, shall not be released pursuant to this section if the complaint is frivolous, as defined in Section 128.5 of the Code of Civil Procedure, or if the complaint is unfounded.

(10) The cost of copies of records subject to disclosure pursuant to this subdivision that are made available upon the payment of fees covering direct costs of duplication pursuant to subdivision (b) of Section 6253 of the Government Code shall not include the costs of searching for, editing, or redacting the records.

(11) Except to the extent temporary withholding for a longer period is permitted pursuant to paragraph (8), records subject to disclosure under this subdivision shall be provided at the earliest possible time and no later than 45 days from the date of a request for their disclosure.

(12) (A) For purposes of releasing records pursuant to this subdivision, the lawyer-client privilege does not prohibit the disclosure of either of the following:

(i) Factual information provided by the public entity to its attorney or factual information discovered in any investigation conducted by, or on behalf of, the public entity's attorney.

(ii) Billing records related to the work done by the attorney so long as the records do not relate to active and ongoing litigation and do not disclose information for the purpose of legal consultation between the public entity and its attorney.

(B) This paragraph does not prohibit the public entity from asserting that a record or information within the record is exempted or prohibited from disclosure pursuant to any other federal or state law.

(c) Notwithstanding subdivisions (a) and (b), a department or agency shall release to the complaining party a copy of the complaining party's own statements at the time the complaint is filed.

(d) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained,

exonerated, or unfounded) made against its officers if that information is in a form that does not identify the individuals involved.

(e) Notwithstanding subdivisions (a) and (b), a department or agency that employs peace or custodial officers may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation, or the officer's agent or representative, publicly makes a statement that they know to be false concerning the investigation or the imposition of disciplinary action. Information may not be disclosed by the peace or custodial officer's employer unless the false statement was published by an established medium of communication, such as television, radio, or a newspaper. Disclosure of factual information by the employing agency pursuant to this subdivision is limited to facts contained in the officer's personnel file concerning the disciplinary investigation or imposition of disciplinary action that specifically refute the false statements made public by the peace or custodial officer or their agent or representative.

(f) (1) The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition.

(2) The notification described in this subdivision is not conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court, or judge of this state or the United States.

(g) Notwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, or the holding in Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272, records and information obtained from records maintained by an agency or body established by a city, county, city and county, local government entity, state agency, or state department for the purpose of civilian oversight of peace officers shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). A record disclosed pursuant to this paragraph shall be redacted only to remove personal data or information such as a home address, telephone number, or identities of family members, other than the names and work-related information of peace and custodial officers, to preserve the anonymity of complainants and witnesses, or to protect confidential medical, financial, or other information in which disclosure would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by peace officers and custodial officers, or where there is a specific, particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the peace officer, custodial officer, or others.

(g)

(h) This section does not affect the discovery or disclosure of information contained in a peace or custodial officer's personnel file pursuant to Section 1043 of the Evidence Code.

(h)

(i) This section does not supersede or affect the criminal discovery process outlined in Chapter 10 (commencing with Section 1054) of Title 6 of Part 2, or the admissibility of personnel records pursuant to subdivision (a), which codifies the court decision in Pitchess v. Superior Court (1974) 11 Cal.3d 531.

(i)

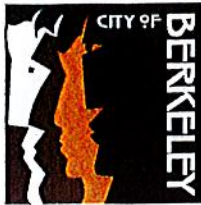
(j) Nothing in this chapter is intended to limit the public's right of access as provided for in Long Beach Police Officers Association v. City of Long Beach (2014) 59 Cal.4th 59.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Police Accountability Board // Office of the Director of Police
 Accountability

Current and pending Items	Status
I. Policy Work	
1. Monitor Fair & Impartial Policing recommendations	Subcommittee formed; ongoing
2. Review Policy 319, Hate Crimes	In progress
3. Controlled Equipment Impact Statements & Use Policies	1 st review completed; future work TBD
4. Automatic License Plate Readers	- Current use policy to Council 4-26. - Revised policy for fixed ALPRs forthcoming
5. Body-Worn Camera policy – update to incorporate PAB/DPA and reflect greater access	Staff to discuss needed changes with BPD; pending
6. Inquiry into sedative(?) injected involuntarily into detainee	Policy review opened; pending with staff
7. Lexipol Policies – continue review of General Orders converted to Lexipol format	Not started
8. Mental Health Response	Subcommittee formed
9. Policy 351, Fixed Surveillance Cameras	Subcommittee formed
10. Changes to Policy 311, warrantless searches of those on supervised release	Agendized for 4-13
II. Legal and operational issues	
11. Draft Permanent Regulations	Subcommittee in progress
12. Director Search	In progress
13. PAB Investigator hiring	In progress
14. Union's PERB charge	- Awaiting City Attorney. - Public response on 4-13 agenda
15. Budget for FY 2023 & 2024	In progress
III. Other Board obligations	
16. Training	In progress
17. Commendations - January to December 2021 received from BPD	To be agendized
18. Outreach (also staff obligation)	Not started

IV. Individual Complaints (allege misconduct against officers)	
19. Five active complaints: one awaiting rescheduled hearing; one in criminal tolling; 3 awaiting records release.	
V. Other Staff obligations	
20. New Citywide website	Ongoing; to be completed end April.
21. Publicize application process for public members of policy subcommittees	Pending with staff



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

March 30, 2022

To: Honorable Mayor and Members of the City Council
From: Michael Chang, Chairperson, Police Accountability Board
Re: Surveillance Technology Use Policy for Automated License Plate Readers –
April 26, 2022 City Council meeting

The Police Accountability Board (PAB) recently reviewed Councilmember Harrison's proposed Surveillance Technology Use Policy for Automated License Plate Readers (ALPRs), as well as revisions suggested by Councilmember Terry Taplin. The proposed ALPR Use Policies for the Berkeley Police Department (BPD) were submitted in conjunction with an item to accept Surveillance Technology Reports for ALPRs, GPS Trackers, Body Worn Cameras, and Street Level Imagery Project under the Surveillance Technology Use and Community Safety Ordinance.

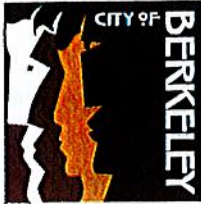
The PAB unanimously supported Councilmember Harrison's proposed revisions to the Use Policy for ALPRs. Board members observed that BPD's current policy allows for the use of ALPRs for criminal investigations, extending their use beyond the parking enforcement function for which their acquisition was authorized by City Council. It was also noted that Councilmember Harrison's proposed revisions are consistent with the original authorized use of ALPRs for parking enforcement.

Police Accountability Board members further noted that some of Councilmember Taplin's proposed revisions to Councilmember Harrison's proposal – specifically in Section 1302.3(c)(2), adding a reference to BPD's policy prohibiting harassment and intimidation, and Section 1302.5(c), specifying that only authorized personnel may access California Law Enforcement Telecommunications System (CLETS) data – contribute clarity. However, overall his proposal provides for the use of ALPRs beyond their authorized use, for parking enforcement.

The PAB took this action by a unanimous vote at its February 23, 2022, meeting:
Moved/seconded – Owens/Moore; Ayes – Calavita, Chang, Harris, Leftwich, Levine, Mizell, Moore, Owens, Ramsey, Batista; Noes – none; Abstentions – none; Absent – Harris.

cc: Dee Williams-Ridley, City Manager
Jennifer Louis, Interim Chief of Police
Police Accountability Board Members

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OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

April 6, 2022

To: Interim Police Chief Jennifer Louis

From: Michael Chang, *Michael Chang* Chairperson, Police Accountability Board

Re: Police Equipment and Community Safety Ordinance Impact Statements

The Police Accountability Board (PAB) held a special meeting on March 30, 2022, for the purpose of reviewing the Impact Statements that the Police Department prepared and submitted to the PAB in order to meet the Department's obligations under the Police Equipment and Community Safety Ordinance ("Ordinance")¹; specifically under B.M.C. Section 2.100.040 (G), Review Process for Previously-Acquired Equipment.

Preliminarily, we note that the Appendix to the Impact Statements contains "Applicable Lexipol Policies Respective to Each Equipment." Thus, we presume that those Lexipol Policies are intended to serve as the Use Policies that also must be submitted under B.M.C. Section 2.100.040 (G). The introduction to the Impact Statements notes that they also fulfill the obligations set forth in Assembly Bill 481.²

However, the PAB identified several ways in which the Impact Statements fall short of meeting the requirements of the Ordinance and of AB 481. Furthermore, the PAB took notice of AB 48,³ which prohibits law enforcement agencies from using kinetic energy projectiles or chemical agents to disperse an assembly, protest, or demonstration, except in limited circumstances. The limitations in AB 48 do not appear to be incorporated either in the Impact Statements or the Lexipol Policies. Accordingly, the PAB requests that the Police Department revise the Impact Statements and Lexipol Policies so that they are fully compliant with the local Ordinance, state law, and any applicable federal law. The PAB further suggests consultation with the City Attorney's Office to ensure all the City's legal obligations are met.

1. Following are some examples of how the Impact Statements or Use Policies are lacking:

¹ Ordinance No. 7760-N.S., codified in Berkeley Municipal Code Chapter 2.100.

² Adding Sections 7070 through 7075 to the Government Code.

³ Adding Section 13652 to the Penal Code, and other provisions not relevant here.

- FN 303 and FN Pava Impact Projectile:

The Impact Statement for this launcher states in Section E., Use (p. 19), that the FN 303 is designed to reduce the potential for a violent confrontation; is less likely to result in serious bodily injury or death, and can be used to de-escalate a potentially deadly situation. Missing, however, is a reference to the prohibition on the use of kinetic energy projectiles to disperse any assembly, protest, or demonstration, except by a trained peace officer, if the use is objectively reasonable to defend against a threat to life or serious bodily injury, or to bring a dangerous and unlawful situation under control; and, in either case, by following certain guidelines. (AB 48; Penal Code Sec. 13652(b).) This Impact Statement thus fails to meet the conditions of the Ordinance because an Impact Statement must include "intended uses and effects" of each type of controlled equipment (B.M.C. Sec. 2.100.020 (C)).

Moreover, the applicable Lexipol Policies (300 – Use of Force, and 303 – Control Devices and Techniques), do not comply with AB 481, which requires that a "military equipment use policy" address "[t]he purposes and authorized uses for which the law enforcement agency . . . proposes to use each type of military equipment." (Gov. Code sec. 7070(d)(2).) In omitting the limitations placed on kinetic energy projectiles by Penal Code Section 13652(b), Policies 300 and 303 do not accurately describe the authorized uses of the FN 303 launcher.

These same issues arise for the Impact Statements and Policies 300 and 303 with respect to the Penn Arms and Milkor launchers.

- OC Spray (Pepper Spray):

The Impact Statement for OC Spray is lacking in a way similar to that for the FN 303 launcher. The description of its Use (Section E, p. 25) states that OC spray may be considered for use to bring individuals or groups about to become violent under control; but should not be used against those who merely fail to disperse or do not appear to present a risk to the safety of others. It omits any reference to the stricter limitations on using this chemical agent under AB 48 (the same limitations as for kinetic energy projectiles cited above, under Penal Code Sec. 13652(b)), and thus falls short of compliance with the Ordinance.

Additionally, Lexipol Policy 303 does not reference the current ban on OC spray for crowd control during the COVID-19 pandemic, so it is not compliant with AB 481, requiring a listing of authorized uses. While that ban is included in Policy 300 on Use of Force (in Sec. 300.3.7), the lack of an up-front reference in the Impact Statement is confusing and possibly misleading.

- CS Gas (Tear Gas):

Currently, using tear gas is prohibited under any circumstances, so it is questionable whether an Impact Statement for this chemical agent should be

included. If it is included because the Department is reporting its possession of this equipment, the ban must be noted, to comply with local and state law.⁴

2. Another problem with the Impact Statements is internal inconsistency of the less-lethal launcher descriptions. For the Penn Arms launcher, Section 6, Alternative (p. 13), states, "This is the only piece of less lethal equipment (other than the FN 303) that allows officers to address a potentially deadly threat from a distance." But identical language is used in describing an Alternative for the Milkor launcher (p. 18), so two pieces of less lethal equipment have been identified as an alternative to the FN 303. Finally, the FN 303 itself is described as "the **only** piece of equipment that allows officers to address a potentially deadly threat from a distance" (p. 23; emphasis added), which contradicts the descriptions of the Penn Arms and Milkor launchers as alternatives to the FN 303.

3. The PAB also discussed a suggestion for the Department to employ best practices in developing its use policies, while acknowledging it did not have time at this point to suggest best practices for all relevant policies within the approval timeframe mandated by the Ordinance.

4. With respect to mutual aid, the PAB points out a pertinent provision of AB 481: A law enforcement agency must obtain the governing body's approval, by adopting a military equipment use policy, before engaging in a number of enumerated activities. (Gov. Code Sec. 7071(a)(1).) One of them is "(D) Collaborating with another law enforcement agency in the deployment or other use of military equipment within the territorial jurisdiction of the governing body." This means that, before any outside law enforcement agency uses military equipment within the City of Berkeley, an approved use policy for that equipment must be in place. As this language has no counterpart in the local Ordinance, it is important that your Department is mindful of this provision.

5. Finally, the PAB requests that when you submit your item seeking approval of the Impact Statements and Use Policies into City Council agenda process, that you also send a copy to the Interim Director of Police Accountability

The PAB approved communicating to you the points made in this memorandum by a unanimous vote at its March 30, 2022 special meeting: Moved/seconded – Owens/Ramsey; Ayes – Calavita, Chang, Harris, Levine, Mizell, Moore, Owens, Ramsey; Noes – none; Abstentions – none; Absent – Leftwich.

cc: Farimah Brown, City Attorney
Police Accountability Board Members

⁴ Interim Director Lee advised me that, during your April 5 phone conversation, you reminded her that in September 2020 the Police Review Commission supported the BPD's request for an exception to the tear gas ban for use during certain Special Response Team operations. This was not presented to the City Council but may be in the future.

For PAB's info - see below

- a. Police Acquisition & Use of Controlled Equipment – Chair Mizell reported that their last meeting will be Tuesday, Sept. 29, at 12 p.m.

9. OLD BUSINESS (discussion and action)

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

Motion to accept the proposed language, as revised to read as follows:

Warrantless Searches of Individuals on Supervised Release Search Conditions.

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

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.

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

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

Noes: None

Abstain: None

Absent: None

10. NEW BUSINESS (discussion and action)

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

Motion to forward to the City Council for their consideration the following exception for use of tear gas during SRT operations:

303.6 TEAR GAS GUIDELINES

Tear gas may only be used by trained members of the Special Response Team during SRT tactical operations (e.g., during barricaded subject operations or responding to armed attacks during an SRT operation), in accordance with Policy 300, to protect people from the risk of serious bodily injury or death.

The above paragraph notwithstanding, as per City Council policy (June 9, 2020), the use of tear gas by any employees of the Berkeley Police Department, including the Special Response Team, is prohibited in crowd control and crowd management situations.

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

Moved/Second (Perezvelez/Leftwich) Motion Carried

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

Noes: Mizell

Abstain: Allamby

Absent: None

11. PUBLIC COMMENT

There was 1 speaker.

Closed Session

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

12. PRESENTATION OF ADMINISTRATIVE CLOSURE IN COMPLAINT #2474

Motion to approve Complaint #2474 for administrative closure.

Moved/Second (Perezvelez/Calavita) Motion Carried

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

Noes: None

Abstain: None

Absent: None

End of Closed Session

13. ANNOUNCEMENT OF CLOSED SESSION ACTION

The vote to administratively close Complaint #2474 was announced.

14. ADJOURNMENT

By general consent, the meeting was adjourned at 10:04 p.m.

Assembly Bill No. 48

CHAPTER 404

An act to amend Section 12525.2 of the Government Code, and to add Sections 13652 and 13652.1 to the Penal Code, relating to law enforcement.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 48, Lorena Gonzalez. Law enforcement: use of force.

(1) Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law requires law enforcement agencies to maintain a policy on the use of force, as specified. Existing law requires the Commission on Peace Officer Standards and Training to implement courses of instruction for the regular and periodic training of law enforcement officers in the use of force.

This bill would prohibit the use of kinetic energy projectiles or chemical agents by any law enforcement agency to disperse any assembly, protest, or demonstration, except in compliance with specified standards set by the bill, and would prohibit their use solely due to a violation of an imposed curfew, verbal threat, or noncompliance with a law enforcement directive. The bill would include in the standards for the use of kinetic energy projectiles and chemical agents to disperse gatherings the requirement that, among other things, those weapons only be used to defend against a threat to life or serious bodily injury to any individual, including a peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control. The bill would define chemical agents to include, among other substances, chloroacetophenone tear gas or 2-chlorobenzalmalonitrile gas. The bill would make these provisions inapplicable within a county jail or state prison facility.

This bill would also require each law enforcement agency, within a specified timeframe, to post on their internet website a summary, as described, of any incident in which a kinetic energy projectile or chemical agent is deployed by that agency for the purpose of crowd control. The bill would require the Department of Justice to provide a compiled list of links to these reports on its internet website.

(2) Existing law requires each law enforcement agency to annually report specified use of force incidents to the Department of Justice and requires the Department of Justice to annually publish a summary of those incidents, as specified.

This bill would require these reports to be made monthly. By imposing new duties on law enforcement agencies, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 12525.2 of the Government Code is amended to read:

12525.2. (a) Each law enforcement agency shall monthly furnish to the Department of Justice, in a manner defined and prescribed by the Attorney General, a report of all instances when a peace officer employed by that agency is involved in any of the following:

- (1) An incident involving the shooting of a civilian by a peace officer.
- (2) An incident involving the shooting of a peace officer by a civilian.
- (3) An incident in which the use of force by a peace officer against a civilian results in serious bodily injury or death.
- (4) An incident in which use of force by a civilian against a peace officer results in serious bodily injury or death.

(b) For each incident reported under subdivision (a), the information reported to the Department of Justice shall include, but not be limited to, all of the following:

- (5) The gender, race, and age of each individual who was shot, injured, or killed.
- (6) The date, time, and location of the incident.
- (7) Whether the civilian was armed, and, if so, the type of weapon.
- (8) The type of force used against the officer, the civilian, or both, including the types of weapons used.
- (9) The number of officers involved in the incident.
- (10) The number of civilians involved in the incident.
- (11) A brief description regarding the circumstances surrounding the incident, which may include the nature of injuries to officers and civilians and perceptions on behavior or mental disorders.

(c) Each year, the Department of Justice shall include a summary of information contained in the reports received pursuant to subdivision (a) through the department's OpenJustice Web portal pursuant to Section 13010 of the Penal Code. This information shall be classified according to the reporting law enforcement jurisdiction. In cases involving a peace officer who is injured or killed, the report shall list the officer's employing jurisdiction and the jurisdiction where the injury or death occurred, if they are not the same. This subdivision does not authorize the release to the public of the badge number or other unique identifying information of the peace officer involved.

(d) For purposes of this section, "serious bodily injury" means a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

SEC. 2. Section 13652 is added to the Penal Code, to read:

13652. (a) Except as otherwise provided in subdivision (b), kinetic energy projectiles and chemical agents shall not be used by any law enforcement agency to disperse any assembly, protest, or demonstration.

(b) Kinetic energy projectiles and chemical agents shall only be deployed by a peace officer that has received training on their proper use by the Commission on Peace Officer Standards and Training for crowd control if the use is objectively reasonable to defend against a threat to life or serious bodily injury to any individual, including any peace officer, or to bring an objectively dangerous and unlawful situation safely and effectively under control, and only in accordance with all of the following requirements:

- (1) Deescalation techniques or other alternatives to force have been attempted, when objectively reasonable, and have failed.
- (2) Repeated, audible announcements are made announcing the intent to use kinetic energy projectiles and chemical agents and the type to be used, when objectively reasonable to do so. The announcements shall be made from various locations, if necessary, and delivered in multiple languages, if appropriate.
- (3) Persons are given an objectively reasonable opportunity to disperse and leave the scene.
- (4) An objectively reasonable effort has been made to identify persons engaged in violent acts and those who are not, and kinetic energy projectiles or chemical agents are targeted toward those individuals engaged in violent acts. Projectiles shall not be aimed indiscriminately into a crowd or group of persons.
- (5) Kinetic energy projectiles and chemical agents are used only with the frequency, intensity, and in a manner that is proportional to the threat and objectively reasonable.
- (6) Officers shall minimize the possible incidental impact of their use of kinetic energy projectiles and chemical agents on bystanders, medical personnel, journalists, or other unintended targets.
- (7) An objectively reasonable effort has been made to extract individuals in distress.
- (8) Medical assistance is promptly provided, if properly trained personnel are present, or procured, for injured persons, when it is reasonable and safe to do so.
- (9) Kinetic energy projectiles shall not be aimed at the head, neck, or any other vital organs.
- (10) Kinetic energy projectiles or chemical agents shall not be used by any law enforcement agency solely due to any of the following:
 - (A) A violation of an imposed curfew.
 - (B) A verbal threat.

(C) Noncompliance with a law enforcement directive.

- (11) If the chemical agent to be deployed is tear gas, only a commanding officer at the scene of the assembly, protest, or demonstration may authorize the use of tear gas.

(c) This section does not prevent a law enforcement agency from adopting more stringent policies.

(d) For the purposes of this section, the following terms have the following meanings:

- (1) "Kinetic energy projectiles" means any type of device designed as less lethal, to be launched from any device as a projectile that may cause bodily injury through the transfer of kinetic energy and blunt force trauma. For purposes of this section, the term includes, but is not limited to, items commonly referred to as rubber bullets, plastic bullets, beanbag rounds, and foam tipped plastic rounds.
- (2) "Chemical agents" means any chemical that can rapidly produce sensory irritation or disabling physical effects in humans, which disappear within a short time following termination of exposure. For purposes of this section, the term includes, but is not limited to, chloroacetophenone tear gas, commonly known as CN tear gas; 2-chlorobenzalmalononitrile gas, commonly known as CS gas; and items commonly referred to as pepper balls, pepper spray, or oleoresin capsicum.

(e) This section does not apply within any county detention facility or any correctional facility of the Department of Corrections and Rehabilitation.

SEC. 3. Section 13652.1 is added to the Penal Code, to read:

13652.1. (a) Each law enforcement agency shall, within 60 days of each incident, publish a summary on its internet website of all instances in which a peace officer employed by that agency uses a kinetic energy projectile or chemical agent, as those terms are defined in Section 13652, for crowd control. However, an agency may extend that period for another 30 days if they demonstrate just cause, but in no case longer than 90 days from the time of the incident.

(b) For each incident reported under subdivision (a), the summary shall be limited to that information known to the agency at the time of the report and shall include only the following:

- (1) A description of the assembly, protest, demonstration, or incident, including the approximate crowd size and the number of officers involved.
- (2) The type of kinetic energy projectile or chemical agent deployed.
- (3) The number of rounds or quantity of chemical agent dispersed, as applicable.
- (4) The number of documented injuries as a result of the kinetic energy projectile or chemical agent deployment.

- (5) The justification for using the kinetic energy projectile or chemical agent, including any deescalation tactics or protocols and other measures that were taken at the time of the event to deescalate tensions and avoid the necessity of using the kinetic energy projectile or chemical agent.
- (c) The Department of Justice shall post on its internet website a compiled list linking each law enforcement agency's reports posted pursuant to subdivision (a).

Lee, Katherine

From: Louis, Jennifer A.
Sent: Thursday, March 24, 2022 7:44 PM
To: Lee, Katherine
Subject: Sharing some data we recently pulled

Internal

In the City of Berkeley Auditor's audit report on the City of Berkeley's Police Response (Calls For Service or CFS), which was part of the Reimagining Public Safety omnibus package, a recommendation was made by the Auditor that BPD begin more formally collecting information on when homelessness or mental health was a component to a call for service received by the Department.

Starting July 1, 2021, we formally began utilizing "H" homeless and "MH" mental health disposition codes when closing out any call involving a homeless person or a person with mental health issues. Officers were instructed that they were not required to ask people what their housing status is unless necessary for identification purposes. Unless there are mental health issues which are related to the call, they are not required to ask them what their mental health status is either. Officers are expected to use their best judgement / perception in determining if a call is related to a homeless issue or someone suffering from a mental health issue. If so, they are directed to add the "H" and/or "MH" disposition to the CAD disposition.

The below chart is an example of how we are capturing data on the total numbers of times H and MH has been used. This particular query was from July 1 2021 through December 31,2021 and includes the overall number of CFS (incident count) over the same time period. It should be noted that H and MH codes can occur in the same incident, which is the grand total of dispo counts is not simply a totaling of H and M. Finally, we are closing in on production of a public facing dashboard and this specific data will be available regularly updated there. I had a request for this data and thought that it might also be of interest to the PAB.

Calls For Service - July 1, 2021 through December 31, 2021

Row Labels	Disposition Count	Incident Count
H	1,534	36,180
MH	1,481	36,180
Grand Total	3,015	36,180

Respectfully,

Jen

Jen Louis
Interim Chief of Police
Berkeley Police Department

Lee, Katherine

From: Louis, Jennifer A.
Sent: Thursday, March 24, 2022 7:09 PM
To: Lee, Katherine
Subject: Correct Consent form
Attachments: New Consent Search FORM.pdf

Internal

Good evening,

Here is the correct version of the consent search form. I have a few other items to forward that will be going to Council as an off agenda memo in response to some questions at the Council presentation on FIP implementation. As soon as I have approval on the memo from the CM I will get you a copy

Jen

Jen Louis
Interim Chief of Police
Berkeley Police Department

Follow us on:





BERKELEY POLICE DEPARTMENT

2100 Martin Luther King, Jr. Way, Berkeley, CA 94704

TEL: (510) 981-5900, TDD: (510) 981-5799, FAX: (510) 981-5744

EMAIL: police@cityofberkeley.info

CONSENT SEARCH FORM

Case: _____

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

Officer(s):

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

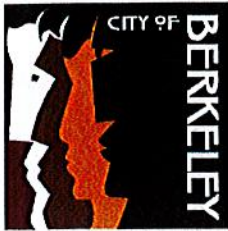
	TO BE SEARCHED	PERSON'S INITIALS	DATE	TIME
PERSON				
RESIDENCE				
PROPERTY				
VEHICLE				
ELECTRONIC DEVICE				

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

(Signed) _____

Officer _____

Witness _____



Office of the City Manager

March 25, 2022

To: Honorable Mayor and Members of the City Council

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

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

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

Task Force Recommendations:

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

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

Task Force Recommendation:

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

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

1041.3 PROCEDURES

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

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

Task Force Recommendation:

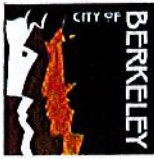
- Adopt a policy to require written consent for all vehicle and residence searches and update the consent search form in alignment with best practice and community feedback.

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

Attachments

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

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



Internal

Berkeley Police Department Memorandum



To: Captain Rico Rolleri, Professional Standards Division

From: Sergeant Peter Lee, Audits and Inspections Sergeant

Date: January 18th, 2022

Subject: Traffic Safety Working Group

Summary:

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

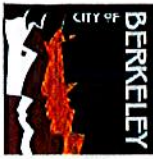
Background:

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

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

Implementation:

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



Berkeley Police Department Memorandum



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

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

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

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

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

Prong # 2 – Community Reports

Responding to calls from community members.

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

Prong #3 – Community Caretaking

Examples of violations that are safety concerns but not necessarily PCFs

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

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

Seatbelt Violations

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



Internal

Berkeley Police Department Memorandum



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

Distracted Driving

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

Driving Under the Influence/ NHTSA's 24 DUI cues

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

EARLY WARNING SYSTEM

1041.1 PURPOSE

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

1041.2 POLICY

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

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

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

1041.3 PROCEDURES

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

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

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

EARLY WARNING SYSTEM

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

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

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

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

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

1041.4 MANAGEMENT OF PROGRAM RECORDS

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

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

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

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

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

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

1041.5 ADMINISTRATIVE REVIEW BOARD

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

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

1041.6 INITIATION OF EWS PROGRAM

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

- (a) The subject employee;

EARLY WARNING SYSTEM

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

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

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

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

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

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

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

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

Search and Seizure

311.1 PURPOSE AND SCOPE

Both the federal and state Constitutions provide every individual with the right to be free from unreasonable searches and seizures. This policy provides general guidelines for Berkeley Police Department personnel to consider when dealing with search and seizure issues.

311.2 POLICY

It is the policy of the Berkeley Police Department to respect the fundamental privacy rights of individuals. Members of this department will conduct searches in strict observance of the constitutional rights of persons being searched. All seizures by this department will comply with relevant federal and state law governing the seizure of persons and property.

The Department will provide relevant and current training to officers as guidance for the application of current law, local community standards and prosecutorial considerations regarding specific search and seizure situations, as appropriate.

311.3 SEARCHES

The U.S. Constitution generally provides that a valid warrant is required in order for a search to be valid. There are, however, several exceptions that permit a warrantless search.

Examples of law enforcement activities that are exceptions to the general warrant requirement include, but are not limited to, searches pursuant to the following:

- Valid consent
- Incident to a lawful arrest
- Legitimate community caretaking interests
- Vehicle searches under certain circumstances
- Exigent circumstances

Certain other activities are recognized by federal and state courts and by certain statutes as legitimate law enforcement activities that also do not require a warrant. Such activities may include seizure and examination of abandoned property, and observations of activities and property located on open public areas.

Because case law regarding search and seizure is constantly changing and subject to interpretation by the courts, each member of this department is expected to act in each situation according to current training and his/her familiarity with clearly established rights as determined by case law.

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

Search and Seizure

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

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

311.4 SEARCH PROTOCOL

Although conditions will vary and officer safety and other exigencies must be considered in every search situation, the following guidelines should be followed whenever circumstances permit:

- (a) Members of this department will strive to conduct searches with dignity and courtesy.
- (b) Officers should explain to the person being searched the reason for the search.
- (c) Searches should be carried out with due regard and respect for private property interests and in a manner that minimizes damage. Property should be left in a condition as close as reasonably possible to its pre-search condition.
- (d) In order to minimize the need for forcible entry, an attempt should be made to obtain keys, combinations or access codes when a search of locked property is anticipated.
- (e) When the person to be searched is of the opposite sex as the searching officer, a reasonable effort should be made to summon an officer of the same sex as the subject to conduct the search. When it is not practicable to summon an officer of the same sex as the subject, the following guidelines should be followed:
 1. Another officer or a supervisor should witness the search.
 2. The officer should not search areas of the body covered by tight-fitting clothing, sheer clothing or clothing that could not reasonably conceal a weapon.

311.5 ASKING IF A PERSON IS ON PROBATION OR PAROLE

In an effort to foster community trust, officers should not ask if a person is on probation or parole when a person has satisfactorily identified themselves, either verbally or by presenting identification documents.

Officers may determine probation or parole status through standard records checks conducted in the course of a traffic safety or investigative stop. Officers should only ask when necessary to:

- (a) Protect the safety of others, the person detained, or officers;
- (b) Further a specific law enforcement investigative purpose (for example, sorting out multiple computer returns on a common name);
- (c) To confirm probation and parole status subsequent to a records check.

If an officer needs to ask the question, "Are you on probation or parole?" the officer should do so while treating the person with dignity and respect, and being mindful that people may take offense at the question.

Search and Seizure

311.6 WARRANTLESS SEARCHES OF INDIVIDUALS ON SUPERVISED RELEASE SEARCH CONDITIONS

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

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

311.7 DOCUMENTATION

Officers shall document, via MDT disposition, Field Interview, Incident or Case Report, any search of a person, vehicle or location. Officers should consider documenting, as applicable, the following:

- Reason for the search
- Any efforts used to minimize the intrusiveness of any search (e.g., asking for consent or keys)
- What, if any, injuries or damage occurred
- All steps taken to secure property
- The results of the search, including a description of any property or contraband seized
- If the person searched is the opposite sex, any efforts to summon an officer of the same sex as the person being searched and the identification of any witness officer

Supervisors shall review reports to ensure the reports are accurate, that actions are properly documented and that current legal requirements and department policy have been met.



BERKELEY POLICE DEPARTMENT
 2100 Martin Luther King, Jr. Way, Berkeley, CA 94704
 TEL: (510) 981-5900, TDD: (510) 981-5799, FAX: (510) 981-5744
 EMAIL: police@cityofberkeley.info

CONSENT SEARCH FORM

Case: _____

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

Officer(s):

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

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

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

(Signed) _____

Officer _____

Witness _____

Lee, Katherine

From: Lee, Katherine
Sent: Monday, April 4, 2022 3:49 PM
To: Lee, Katherine
Cc: Norris, Byron
Subject: FW: [LawEnforcementOversight] Research Participants Needed
Attachments: Recruitment Letter IRB updated 3.3.2022.docx

Dear Board members,

Please see the request below (and repeated on the attached) seeking participants for a study. Byron confirmed that you are the type of civilian review board members that the requestor wishes to interview.

-Kathy

Katherine J. Lee

Interim Director of Police Accountability

City of Berkeley

o: 510.981.4960 (usually in office during regular business hours)

c: 510.926.1103

From: LawEnforcementOversight@groups.io <LawEnforcementOversight@groups.io> On Behalf Of Vereen Barton via groups.io

Sent: Monday, March 28, 2022 6:07 PM

To: LawEnforcementOversight@groups.io

Subject: [LawEnforcementOversight] Research Participants Needed

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

My name is Vereen Barton. I am a doctoral candidate at Walden University. I am recruiting investigatory Civilian Review Board members for a significant study. The study is a transcendental qualitative exploration of Investigatory Civilian Review Board members' experiences joining and serving on Civilian Review Boards. This study seeks to investigate the lived experiences of Civilian Review Board members relevant to the recruitment and selection process. The study will also explore the Civilian Review Board member's experiences pertinent to training or lack of training provided, support or lack of support received while serving on the civilian review board.

I am seeking active CRB members above the age of 21 who have conducted police practice complaint investigations. I plan to begin collecting data in March and April of 2022. If you are interested in participating in this study or know someone who meets the criteria for the study, please get in touch with me as soon as possible. You can reach me directly by clicking the linked email at vereen.barton@waldenu.edu or 240-304-6304.

The interview will last approximately 30-45 minutes with a follow-up audio recording, about 10 minutes in length. Each interview will occur via an electronic platform and will be audio recorded. Your name will not be used in the research. Instead of your actual name, a pseudonym will be used, and your organizations' name will not be shared with readers of the study or at final publication. This study is voluntary, and you can end the interview at any time. Your information and participation will always be kept confidential.

Thank you in advance for considering this worthy endeavor. Although participation in this study will help fulfill my requirements for a Ph.D. in Forensic Psychology at Walden University, the information gained from this study can

benefit many, including citizens and Law enforcement management who continue to work toward improvements in transparency and accountability.

I look forward to hearing from you soon.

Sincerely,

Vereen Barton

Walden University PhD Candidate

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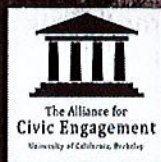
Addressing Excessive Force and Racial Prejudice in Policing

Who Guards The Guardians?:

Join Us Via Zoom on April 11th, 2022 4:00-5:00 PM

Join the Alliance for Civic Engagement and our expert panel as we explore how the current Legal Regime, Pattern and Practice Investigations by US DOJ, and Community Oversight either struggle or succeed in influencing police behavior or constrain bad practices. In an era of criminal justice reckoning, what is the best path forward?

*Submit Questions and
RSVP here*



Jonathan Simon **Rashidah Grinage**

Professor at UC Berkeley
School of Law.

Coordinator of the Coalition for
Police Accountability



Christy Lopez **Erwin Chemerinsky**

Professor at
Georgetown Law

Dean of UC Berkeley School
of Law



Panel Discussion on Police Accountability

The Alliance for Civic Engagement (ACE) will be hosting a panel discussion on Monday, April 11th from 4 – 5 PM PST, on different approaches to improving police accountability. This conversation will give a special focus on how these three approaches either fail or succeed to constrain police behavior involving racial prejudice and excessive force. Our panelists represent three different approaches: The current legal regime, Pattern and Practice Investigations by US DOJ, and Community Oversight. Be a part of the conversation by submitting a question to the panel through the provided link below. A zoom link and question submission form can be accessed through the link below. We hope you'll consider joining us for this important discussion!

[RSVP/Question Submission Form - Google](https://docs.google.com/forms/d/1LIJmKqJs37fD29UutZT0duyYuK-tpmrRPBPYd134KDw/edit)

[Forms](https://docs.google.com/forms/d/1LIJmKqJs37fD29UutZT0duyYuK-tpmrRPBPYd134KDw/edit)

Join Zoom Meeting

<https://berkeley.zoom.us/j/98625211577>

Moderator:

Professor Jonathan Simon (Berkeley Law).

Jonathan Simon joined the Berkeley Law faculty in 2003 as part of the J.D., JSP, and Legal Studies programs. He teaches in the areas of criminal law, criminal procedure, criminology, legal studies and the sociology of law. His scholarship deals with mass incarceration and the role of crime and risk in modern government. Simon's scholarship concerns the role of crime and criminal justice in governing contemporary societies, risk and the law, and the history of the interdisciplinary study of law. Professor Simon currently serves as Co-Chair on UC Berkeley's Independent Advisory Board on Police Accountability for UCPD.

Panelists:

Dean Erwin Chemerinsky (Berkeley Law) - The current legal regime

Erwin Chemerinsky is Dean and Jesse H. Choper Distinguished Professor of Law, University of California, Berkeley School of Law. His work as a constitutional law scholar has helped to elucidate how legal doctrines, established through Supreme Court rulings, have affect racial prejudice and excessive force in policing. Dean Chemerinsky will share with us, some areas where some of these doctrines have enabled problematic police behavior. He frequently argues appellate cases, including in the United States Supreme Court. In January 2021, he was named President-elect of the Association of American Law Schools.

Professor Christy Lopez (Georgetown Law) - Pattern and Practice Investigations by US DOJ

Christy E. Lopez is a Professor at Georgetown Law. From 2010 to 2017, Professor Lopez served as a Deputy Chief in the Special Litigation Section of the Civil Rights Division at U.S. DOJ. Professor Lopez directly led the team that investigated the Ferguson Police Department and was a primary drafter of the Ferguson Report and negotiator of the Ferguson consent decree. From 2003 to 2010, Professor Lopez served as a federal court monitor of the Oakland (California) Police Department for Senior District Judge Thelton E. Henderson of the Northern District of California. Professor Lopez holds a juris doctor from the Yale Law School and a Bachelor of Arts from the University of California at Riverside.

Rashidah Grinage (Coalition for Police Accountability, Oakland, CA) - Community Oversight

Mrs. Rashidah Grinage joined People United for a Better Life in Oakland (PUEBLO) in 1994, after a police-involved shooting that took the lives of her beloved husband, Raphael and son, Luke. She has

served as the Director of PUEBLO from 2005-2014 when she stepped down to serve as the Coordinator of the Coalition for Police Accountability which proposed the now passed Charter change that created the independent police commission for Oakland. She has done extensive research on police practices and served on several advisory boards including the Community Policing Advisory Board, the Task Force reviewing the Rand-funded study of Racial Profiling in Oakland (spearheaded by former Capt. Ron Davis), and Mayor Dellums' Task Force on police issues.

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Office of the City Attorney

March 21, 2022

Rockne A. Lucia, Jr.
Rains Lucia Stern St. Phalle & Silver, PC
Via Email: rclucia@rlslawyers.com

Dear Mr. Lucia,

This letter responds to your correspondence dated February 8, 2022 alleging violations of the Ralph M. Brown Act (Cal. Gov. Code § 54950 *et seq.*) and demanding the City cease and desist actions taken by the Police Accountability Board ("PAB"). The City takes its obligations under the Brown Act seriously and we have carefully considered the concerns you expressed in your letter.

The City Attorney's Office has reviewed the allegations in your letter and determined that no violation of the Brown Act occurred during the viewing of body-worn camera footage by PAB hearing panel members.

The concerns expressed in your letter will be taken into consideration as the City Attorney's Office continues to work closely with PAB and City staff to develop best practices for reviewing evidence, including body-worn camera footage, as part of the Board's process for handling complaints against Berkeley Police Department employees.

Please feel free to contact us with any questions or concerns.

Sincerely,

/s/ Farimah Faiz Brown

Farimah Faiz Brown
City Attorney

cc: Police Accountability Board
Katherine Lee, Interim Director of Police Accountability

Lee, Katherine

From: Charles Clarke <cfclarke@att.net>
Sent: Thursday, March 17, 2022 9:01 PM
To: All Council
Cc: Williams-Ridley, Dee; Louis, Jennifer A.; Bellow, LaTanya; Buddenhagen, Paul; Wong, Jenny; Brown, Farimah F.; Lee, Katherine
Subject: BPD: 36 Bullets in 22 Years
Attachments: Clarke Memo 36 Bullets in 22 Years 03.17.2022.pdf

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear City Officials,

Today I received public records from the City Attorney's Office about a February 2012 BPD officer-involved shooting in Castro Valley that did not figure in my March 10, 2022, memorandum ("The Berkeley Police Department Is Worth Having, Not Halving").

The count of bullets fired by the entire Berkeley Police Department in 22 years (2000-2021) is now 36.

I repeat my urging this Council to neither forget nor endanger the Police Department's good performance as documented in the earlier memo and in an update (attached).

Sincerely,

Charles Clarke
Resident, City Council District 6

Attachment: Clarke Memo 36 Bullets in 22 Years 03.17.2022.pdf

Table 3 (Updated). Officer-Involved Shootings by BPD Officers, 2000-2021

Date	Suspect	Basis for Shooting	Bullets Fired by BPD	Result for Suspect
April 12, 2000	Christopher Garcia	Loaded gun pointed at officers	4	Death
July 25, 2003	Glennel Givens	Loaded gun pointed at officer	3	Death
Feb. 16, 2008	Anita Gay	Knife attack	2	Death
June 28, 2010	Chuong Nguyen	Loaded gun pointed at officer	9	Death
Feb. 8, 2012	Steven Oliver Moore	Stop driver striking officer with vehicle	2	Injury
April 13, 2012	Calvester Stewart	Fired gun at officers	10 + 2 n.d.	Injury
July 30, 2020	Brandon Owens	Stop driver of fleeing vehicle	3	No injury; officer released
Jan. 2, 2021	Vincent Bryant	Jack chain attack; less-lethal ineffective	1	Injury
Total			36	

n.d. negligent discharge, firearm discharged but not at a person

The Berkeley Police Department Has Fired 36 Bullets in 22 Years

Memorandum from Charles Clarke, a resident of Berkeley, March 17, 2022,
To the Berkeley City Council

This memorandum updates the count of bullets fired at (or near) a person by Berkeley Police Department (BPD) officers in the years 2000-2021, to 36.

The present writer reported last week that BPD officers had fired a total of 34 bullets at (or in the vicinity of) a person in Berkeley in the past 22 years.¹ A newly disclosed public record² updates that count to 36. Table 3 (Updated) presents the eight known instances since 2000 when BPD officers fired their service weapons at a person.³

Table 3 (Updated). Officer-Involved Shootings by BPD Officers, 2000-2021

Date	Suspect	Basis for Shooting	Bullets Fired by BPD	Result for Suspect
April 12, 2000	Christopher Garcia	Loaded gun pointed at officers	4	Death
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Jan. 2, 2021	Vincent Bryant	Jack chain attack; less-lethal ineffective	1	Injury
Total			36	

n.d. negligent discharge, firearm discharged but not at a person

¹ Charles Clarke, "The Berkeley Police Department Is Worth Having, Not Halving," Memorandum to the Berkeley City Council, March 10, 2022, p. 4.

² BPD Incident Report 2012-00007070, City of Berkeley Public Record Request 22-140 produced March 17, 2022, <https://cityofberkeleyca.nextrequest.com/requests/22-140>

³ City of Berkeley PRA Responses (suspect, PRA response date, pages): Garcia 5/23/2019 p. 20 of 478; Givens 5/23/2019 pp. 112, 348 of 708; Gay 5/3/2019 p. 3 of 1069; Nguyen 5/3/2019 pp. 20, 288 of 393; Moore 3/17/2022 p. 20 of 37; Stewart 5/3/2019 pp. 2-3 of 1062; Owens 8/2/2020 Miller interview pp. 63-65, 68-69 of 108; Bryant 2021-0223, 1/5/2021 Albrandt interview p. 128 of 216.

The present writer is unaware at this writing of any other officer-involved shootings in the sample period, but it bears repeating from the earlier memorandum:

The Berkeley Police Department is not trigger-happy.

The newly disclosed historical example of a 2012 shooting in Castro Valley⁴ wherein the driver of a stopped vehicle backed his car into a BPD officer (“He tried to kill me.”)⁵ makes BPD’s apparent doctrine discussed in the earlier memorandum⁶ seem more compelling than ever:

A BPD officer should not step in front of a vehicle so as to create the necessity to shoot the driver.

Confronting people at their worst is sometimes part of the duty of a Berkeley Police Department officer. *Even so* the sanctity of life in their performance of that duty remains paramount. That is the standard that the Berkeley Police Department sets for itself.⁷ The setting *and meeting* of that standard has the unwavering support of the present writer, a resident of Berkeley.

The Berkeley City Council should set out to reimagine public safety by preserving the good and desirable elements of the Police Department we have – such as its very rare use of lethal force – while improving those elements in genuine need of improvement.

⁴ BPD News Release, “Officer Involved Shooting During Narcotics Investigation,” February 9, 2012, https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_General/Officer%20Involved%20Shooting%20During%20Narcotics%20Investigation%20020912.pdf

⁵ BPD Incident Report 2012-00007070, *supra* n. 2, p. 20 of 37.

⁶ Clarke, “BPD Worth Having, Not Halving,” *supra* n. 1, pp. 5-7.

⁷ BPD Policy 300, *Use of Force*, section 300.1 Sanctity of Life, p. 1, https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/Use_of_Force.pdf

Basic Principles of Search and Seizure Law

- Fourth Amendment Protections
- Reasonable Expectations of Privacy
- Probable Cause vs Reasonable Suspicion
- Probable Cause to Search or Arrest
- Warrantless Search Exceptions

4th Amendment Protections

- right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures
- no warrants shall be issued without probable cause supported by oath or affirmation
- particularly describing the place to be searched and the persons or things to be seized

4th Amendment

- Does not give individuals an absolute right to privacy; neither does it prohibit all searches.
- Searches & Seizures by the state must be based on Probable Cause
- It limits only those searches conducted by the government that are considered “unreasonable” by the courts.

What is “REASONABLE” – the courts must look at the totality of the circumstances and balance the individual’s rights to privacy against the government’s need to gather evidence and apprehend criminals.

What is a reasonable expectation of privacy?

An expectation of privacy can exist almost anytime and any place as long as:

- individuals have indicated that they personally expect privacy in the object or area – (subjective expectation of privacy – state of mind demonstrated by affirmative action designed to protect their privacy – building a fence, closing window shades or locking compartment)
- their expectation is one which society is prepared to recognize as legitimate – (objectively reasonable)

Fruits of the Poisonous Tree

If courts find a search or seizure is not reasonable and a person's 4th Amendment rights have been violated, all items seized during the search could be ruled inadmissible or excluded as evidence at trial.

The exclusionary rule is not in the Constitution. This was created by the United States Supreme Court to encourage proper law enforcement conduct.

Probable Cause vs Reasonable Suspicion

- The only difference between the two is that *probable cause* requires information of a higher quality and/or quantity than that for *reasonable suspicion*
- Probable cause & reasonable suspicion are based on an assessment of the overall force of the facts

Probable Cause vs Reasonable Suspicion

Probable Cause

Search = Enough facts or information to provide a fair probability, or a substantial chance, that the object sought is located in the place to be searched

Arrest = fair probability or substantial chance that arrestee committed the crime

Reasonable Suspicion

Detention

- Requires only a moderate chance
- Reasonable suspicion exists if the circumstances were merely consistent with criminal activity

Probable Cause to Search

To establish probable cause to search, peace officers must be able to articulate how and why they have a *fair probability* to believe:

- a crime has occurred or is about to occur
- evidence pertaining to the crime exists
- the evidence is at the location they wish to search

**A peace officer's training and experience is relevant in establishing probable cause – facts must be seen and weighed as understood by a reasonable officer with that particular officer's training and experience.

Probable Cause to Arrest

Probable cause to arrest exists if there is a fair probability or substantial chance the arrestee had committed the crime under investigation

Probable Cause to Search vs Probable Cause to Arrest

Differ in content, but not in degree of certainty

What is a Search Warrant

A search warrant is:

- an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer
- commanding the officer to search for an individual or individuals, a thing or things, or personal property
- bring item or individual before the magistrate

Need Probable Cause

Search Warrants

Peace officers must articulate probable cause that:

- a crime has been committed, and
- evidence concerning the crime or the identity of the perpetrator is located at the place to be searched

Arrest Warrants

Peace officers must articulate probable cause that:

- a crime has been committed, and
- the individual to be arrested committed that crime

General Rule With Warrant

- Courts have found searches and seizures are reasonable and lawful when authorized by a valid warrant
- Leaves burden on the defendant to prove the search was illegal

Search Warrants - 606

- Officers should receive authorization from a supervisor
 - Prepare affidavit & search warrant
 - Submit to supervisor for review & approval prior to submitting to judge
 - Risk Assessment, if determined high risk - consult SRT
- **No-knock warrants shall not be prepared, authored, or executed by BPD****

Warrantless Search Exceptions

Under 4th Amendment, warrantless searches of private property are presumptively illegal. However, case law has created some exceptions to the warrant requirement. Warrantless searches will be upheld if the peace officer's conduct came within one of these exceptions.

- in deciding whether a warrantless search or seizure was legal, courts will always consider the totality of the circumstances
- peace officers must always have specific facts to demonstrate the search or seizure fell within one of the exceptions to the warrant requirement

Warrantless Search Exceptions

- Plain View
- Exigent Circumstances
- Cursory (Terry) Search/Pat Down
- Probable Cause
- Consent
- Search Incident to Arrest
- Inventory Search
- Probation Search
- Parole Search

Plain View

If an officer sees something in plain view, from a place the officer has a lawful right to be, no search has taken place.

- Owner has no expectation of privacy for items in plain view, so no 4th amendment protection

Plain View Requirements

To seize something in plain view, the officer must have:

- Probable cause to believe item is contraband or evidence of a crime
- A lawful right to be in the location
- Lawful access to the item

Exigent Circumstances

**Compelling need for official action and no time to secure a warrant

An emergency situation requiring swift action to prevent:

- imminent danger to a person's life or safety
- serious damage to property
- imminent escape of a suspect
- imminent destruction or removal of evidence

**Once emergency is resolved a warrant may be needed for further searching*

Exigent Circumstance

Hot pursuit – officers with probable cause or reasonable suspicion attempt to detain or arrest the suspect in a public place, but the suspect flees inside a private area

Fresh pursuit – No physical chase, but an investigative pursuit. Officers are quickly responding to information concerning the suspect's whereabouts, and the officers reasonably believe the suspect's escape is imminent

*Serious felony

Examples Exigent Circumstances

- Two officers were investigating a carjacking that occurred earlier in the day. When the officers arrested three of the known suspects outside of a residence, one of the suspects told the officers that the fourth suspect was inside the home. Entry into the residence by officers, without a warrant, was lawful to prevent the escape of the fourth suspect.
- A commercial property was found unlocked and unattended. The officer entered the property to locate the name and phone number of the owner and to see if there were any signs of someone inside. While inside, the officer discovered contraband in plain view. The entry was legal because the officer was attempting to prevent damage or further damage to the property.

Example of Exigent Circumstances

- While responding to a neighbor's complaint of strange noises coming from a nearby apartment, officers found a trail of fresh blood in the hallway leading to the apartment door. When the officers started to announce themselves, they heard vague moaning sounds from inside. The officers reasonably suspected that someone inside the apartment was in need of immediate medical attention and entered the property without a warrant or consent.

Warrantless Search Exceptions

Cursory/Pat (Terry) Search Elements

- lawful detention (reasonable suspicion) and
- reasonable belief the person is dangerous or armed.
- Limited search for weapons, not a search for contraband or other evidence
- ** A generalized, non-specific concern for officer safety is not sufficient**

Terry Search – Reasonable Belief armed/dangerous factors

- Clothing
- Actions
- Prior Knowledge
- Reason for Detention
- Companions
- Location
- Time of day/amount of light
- Ratio

Reach Inside Clothing or Pockets

Only if:

- object reasonably felt like a weapon or something that could be used as a weapon
- subject's clothing was so rigid or heavy that the officer could not rule out the possibility of a weapon or potential weapon

Warrantless Search Exceptions – Vehicle Types

Probable Cause Elements:

- Vehicle must be lawfully stopped or accessible
- Probable cause to believe the item will be found inside

If officers believe they have enough information to obtain a search warrant for a vehicle, it is legal for them to search the vehicle without a warrant, “automobile exception” – potential mobility and reduced expectation of privacy

If vehicle is on private property, “belief of reasonable expectation of privacy” a warrant may be necessary to search to enter the property

Warrantless Search Exceptions – Vehicle Types

Odor of Marijuana Post-Prop 64.

Officers may search a vehicle based on the odor of burnt marijuana that supports a reasonable inference the driver was *DUI* or driving while in possession of an *open container* of marijuana. However, you *cannot base* the vehicle search *solely on smell and an admission to possession*. Compliance checks based on legal possession of marijuana are no longer allowed.

If someone is in legal possession of marijuana, this alone will not support a probable cause search. Need additional evidence supporting it is illegally possessed.

Under age 21

Warrantless Search Exceptions

Consent Elements:

- Voluntary &
- Obtained from a person with apparent authority

Must be of free will and not the result of duress or coercion. If consent is merely a submission to an assertion of authority or coercion, the consent is not voluntary.

Make it clear you are requesting permission to search and not demanding it

Warrantless Search Exceptions – Vehicle

Search Incident to Arrest elements:

Probable Cause for lawful custodial arrest and

- unsecured arrestee with reachable access to the vehicle or
- reasonable suspicion to believe evidence of arrest is to be found in the vehicle or
- reasonable suspicion there is a weapon in the vehicle

Warrantless Search Exceptions – Vehicle

Inventory Search types:

- The vehicle must be in lawful custody and
- Search conducted pursuant to standard procedure

**Vehicle inventory should never be undertaken for the purpose of finding evidence or contraband, but rather for taking note of personal property

Warrantless Search Exceptions

Probation

- Sentencing alternative for a person convicted of a crime & is granted by a judge's discretion. Rather than incarceration, the individual remains under the authority of the probation department. It may be formal or informal
- Individual agrees to terms

Parole

- Conditional release from state prison which allows an individual to serve the remainder of a sentence outside of prison

Warrantless Search Exceptions

Probation & Parole searches require the officer to know about the status in advance and the search cannot be conducted in an arbitrary, capricious or manner that would be considered harassment.

* Cellular Phones and Electronic Devices may be searched when the subject is a parolee (includes PRCS, Post Release Community Supervision) or the person was on probation with a search condition that *expressly authorized* searches of electronic communications devices.

Probation & Parole Law

- Warrantless, suspicionless probation & parole searches are both reasonable under the 4th Amendment, according to the California Supreme Court –

This differs from our BPD policy 311

Update to 311- Search and Seizure

- The discussion of asking if someone is on probation or parole was finalized in October in 2020 with PRC.
- The discussion and language on the specific circumstances warranting probation and parole searches were finalized in September of 2020 with PRC.



Officers Should Only Ask - Are You On Probation Or Parole? In The Following 3 instances:

- To protect the safety of others, the person detained, or officers.
 - During a critical incident where the officer doesn't have the ability to wait and conduct a records check.
- To further a specific law enforcement purpose.
 - When the officer conducts a check and receives several returns with a matching name.
- To confirm probation or parole status subsequent to a records check.
 - Just to confirm, you're still on probation/parole for XXX.
 - When asking or confirming if someone is on probation or parole, keep in mind that some people may take offense to this question, and to treat them with dignity and respect.



Warrantless search of Probationers and Parolees

- Under the new updates to 311, officers shall not search a probationer or parolee simply because of their status.
 - For example, an officer is driving and observes a known probationer (for PC 243(e)(1)) walk into Trader Joe's- under this new update to the policy, stopping and searching this probationer wouldn't be within policy without some other articulable facts that establish reasonable suspicion.



Warrantless search of Probationers and Parolees

- The decision to detain and conduct a probation or parole search of an individual should be done at a minimum, in connection with articulable facts that create reasonable suspicion that a crime has been committed, is about to be committed, or is currently being committed.
- For example, an officer conducts a traffic stop in the area of Ashby and Dohr Street. During a records check the officer learns the occupant is on parole for a firearm offense. The officer has knowledge that this is the area of recent shootings, and reasonably believes that this person may be in the area to commit a crime, a search would be within policy (just need articulable facts that establish reasonable suspicion).



Warrantless search of Probationers and Parolees

- A car stop alone of a probationer or parolee doesn't satisfy the articulable fact portion of this updated policy.
- Another example, bike officers observe a known probationer (PC 484) with a history of stealing from 2300 Shattuck (the victim location) standing in front of 2300 Shattuck Ave. A detention and search based on the officers' articulable facts the probationer may have just committed a crime (theft), or is about to commit a crime (theft) based on their knowledge would justify a search in this new policy update (established reasonable suspicion).



Warrantless search of Probationers and Parolees

- Officers conduct a traffic stop in the Berkeley Hills at 3 AM and learn the driver is on parole for PC 211. The parolee doesn't have a viable reason for being in the Berkeley Hills at this hour. The officer is aware that this area has been plagued with catalytic convert thefts in the recent weeks. Exercising the parolees search conditions would be appropriate and within policy. Also note the underlying crime the probationer or parolee has committed may or may not be a contributing factor to the officers' articulable facts that a crime has been, is being, or is about to be committed..

Warrantless search of Probationers and Parolees

- While doing a security check in the marina, officers contact a probationer (for PC 314) sleeping in his car. The officer learns the probationer has a four way search clause. Without any other facts this would not be within policy to exercise the probationers' search terms. However the officer may ask for consent. Additionally, if the officer develops or has knowledge of any articulable facts such as recent PC 314 reports in the area, a reporting party complaining of PC 314 instances with the aforementioned person, or any other articulable facts that led the officer to develop reasonable suspicion that a crime has been, is being, or is about to be committed then the search would be within policy.

Warrantless search of Probationers and Parolees

- Another example, an officer conducts a traffic stop. A records check reveals the driver is on parole. The officer lacks any articulable facts that would allow a search under the conditions of this new update to the policy. The officer may ask the driver if they would consent to a search (one that conforms to the conditions of their parole). Nothing in this policy prohibits and officer's ability to seek consent searches.

Update to 311- Consent Searches

- A revised Berkeley Police Department Consent Search Form was created. It was designed to be in alignment with the occasions that consent might be sought, and has a place for initials/signature. When appropriate, complete the necessary sections, including the case number on the top and route the paperwork to Report Review.



Update to 311- Consent

Q-When exactly should I complete this form, and when isn't it necessary.

A-Officers shall complete this form when conducting a consent search, without any other legal search justifications. When an officer safety or exigency exists, rely on your BWC to capture consent. For example, if you seek a consent search on an individual whom you suspect has a weapon, do NOT pull out the consent form and have it signed prior to conducting a consent search. Simply capture the individual's consent on BWC. Explain in your report (MDT/incident/case) the reason for not obtaining a written consent.



Update to 311- Consent

Q-What if I conduct a car stop, and I develop probable cause, and the individual is on searchable probation. Should I still seek consent? And if so, do I need to get this consent signed on a Consent Search Form?

A-Yes, if you're about to conduct a search, and you are exercising the individual's search conditions, you may seek consent too. It is always good practice to seek consent coupled with your other legal authority for searching. In these instances, continue to rely on your BWC to capture your consent, and just document this in your report.



Update to 311- Consent

- The most notable deviation from past practice is going to be in a consent search by itself. When you are seeking consent, with no other legal grounds for a search, and there isn't an officer safety or exigency component, the updated policy requires a signed consent search form.

Q-Do I need to get this signed before I search?

A-Officers should get the form signed before a search, so long as there isn't an officer safety or exigency component.



Update to 311- Consent

Q-What if someone gives consent but refuses to sign the Consent Search Form?

A-Just note the refusal on the form, and in your report. For the purposes of court it's "relevant but not significant." Again, your body worn camera (BWC) should be sufficient in this circumstance for the purposes of court.



