19

Office of the City Manager

INFORMATION CALENDAR
September 20, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Jennifer Louis, Interim Chief of Police

Subject: Update on the Implementation of Fair and Impartial Policing Task Force
             Recommendations

INTRODUCTION
On February 23rd, 2021 during a City Council Special Meeting, Council referred the recommendations from the Mayor's Fair and Impartial Policing (FIP) Task Force to the Berkeley Police Department for implementation. Quarterly updates were requested by Council and the last quarterly update was provided on June 14, 2022.

CURRENT SITUATION AND ITS EFFECTS
This report provides a quarterly update on the implementation of the Task Force recommendations. Implementation of the FIP Task Force recommendations remains a priority of the Berkeley Police Department. The Professional Standards Division is responsible for managing the project of implementing the recommendations.

Implementation of the recommendations has necessitated the amendment of departmental policies and establishment of new protocols. As part of the process, members of BPD have met on several occasions with Council and Mayor representatives, Police Review Commission and now Police Accountability Board members, FIP Task Force members, and the Police Accountability Board Subcommittee on FIP recommendation implementation. During these meetings, the substance and progress on the implementation of the recommendations were discussed and BPD has been provided feedback and background on the various intentions with each respective recommendation.

The following outlines the specific Task Force recommendations and the respective progress:

Implement a New Evidence-Based Traffic Enforcement Model

Task Force Recommendations:
- **Focusing the basis for traffic stops on safety**

  #### *Implementation:*
  Officers have been provided data regarding primary collision factors and have been directed to enforce those violations wherever they are observed. In addition to focusing on enforcement of primary collision factor violations, sworn personnel are also expected to make investigative stops related to criminal intelligence and information brought forth by the community or our investigations. BPD has implemented and conducted departmental training on a three-prong approach that focuses on primary collision factors, community member reports of dangerous driving or safety issues and community caretaking. Community caretaking considers safety violations that aren't always noted as the primary collision factor but can be a significant contributing factor in serious collisions.

  #### *Status:*
  Recommendation implementation complete and evaluation and transparency efforts are ongoing. Training for all sworn personnel has concluded. The Traffic Division and the National Highway Traffic Safety Administration continuously collect and provide the Berkeley Police Department with data on primary collision factors and statistics on violations that impact public safety. This data provides officers with current information on what to educate the community on and what violations to focus enforcement towards. The department will continue to review and evaluate data on traffic offenses that affect community safety. This will drive the primary focus on ongoing enforcement and education efforts. Information related to this recommendation will also be shared in the near future with the public via BPD's Transparency Hub. Additionally, the focus of traffic enforcement will be formalized as a departmental directive via relevant policy updates.

Task Force Recommendation:
- **Use a clear, evidence-based definition for stops of criminal suspects**

  #### *Implementation:*
  The Police Department is establishing a precision based policing model that considers data and public safety. This model aims to reduce the number of stops that studies have shown had minimal impact on public safety.

  Data driven-tools that enable close to real-time dashboard tracking of calls for service demands have been provided to the Community Services Bureau and Patrol Watch Commanders to help guide officers in their enforcement focus.

During this reporting period, the Department implemented a system that employs a feedback loop with information flowing both ways. The system provides the tracking of calls for service with the goal of call analysis for patrol deployment strategies and also allows officers in the field to communicate their observations to the Community Service Bureau. This feedback loop provides information back to the Community Services Bureau and creates an accountability measure so strategies can be evaluated.

Status:
Recommendation implementation complete and ongoing efforts include the development of data-driven tools to enhance a precision-based policing model and approach to enforcement stops. The goal is to have data-driven approaches to violence prevention programs and real time crime and call analysis for patrol deployment strategies. Ensuring that we implement approaches that identify and work to reduce racial disparities will be a cornerstone to our evidence-based approaches. The Berkeley Police Department will continue to only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria. The Transparency Hub streamlines the collection and dissemination of police data. This system allows for exploration of different evidence-based approaches.

Task Force Recommendation:
- **Reaffirming and clarifying that the Berkeley Police Department will only use race and ethnicity as determining factors in stops only when paired with clear, evidence-based criteria.**

Implementation:
Penal code 13519.4 is existing California law that prohibits racial profiling. BPD Policy 401 (Fair and Impartial Policing) also prohibits racial profiling. Section 401.2 explicitly states, "Officers shall not consider race, ethnicity, national origin, gender, age, religion, sexual orientation/identity or socio-economic status in establishing either reasonable suspicion or probable cause, or when carrying out other law enforcement activities…"

The above policies were reviewed in light of the task force recommendations and found to affirm and clarify police officer responsibilities in stops.

*Status***:**
Recommendation implementation complete and ongoing efforts include: BPD will continue to conduct ongoing training in topics such as implicit bias, racial profiling, and procedural justice concepts. BPD will hold all members to Departmental Policies, especially those strictly and clearly prohibiting racial profiling. Further, stops will be information and evidence based. The BPD Data Analyst Team will continue to develop tools to focus internal efforts using

evidence and information and share data publicly about enforcement and related results.

Implement Procedural Justice Reforms

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.**

   ### *Implementation:*
   The current Early Warning System was originally issued in 2004 and revised in 2008. The system mandates the monitoring of officer's behavior and performance to include, but not limited to attendance, complaints, use of force incidents, and other factors. The Early Warning System serves as a program that identifies and address behavior or training issues before they become a disciplinary matter. Amendments have been made to the Department's Early Warning System policy (Policy 1041) to include the monitoring of stop data for individual officers.

   ### *Status:*
   Implementation complete via issuance of updated policy reflecting recommendations. Pursuant to the FIP recommendation and after meeting with the FIP task Force stakeholders, language was added to the current Early Warning System policy to include data around traffic, bicycle, and pedestrian stops as a category that supervisors will consider for early intervention if merited. Ongoing efforts include implementing new systems for the monitoring of officer's individual stop data by their respective supervisors. The Audits and Inspections Sergeant will also conduct separate and random quarterly audits of officer's stop data, complaints, uses of force incidents and other factors and report the findings to the Chief of Police. The first of these audits is slated to occur this Fall and the results will be provided to the Police Accountability Board.

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.**

   ### *Implementation:*
   A revised written consent form has been created and amendments have been made to our existing search and seizure policy to require written consent for all consent searches. The Department implemented a redesigned Consent Search Form incorporating the collaborative feedback from multiple discussions with the Police Accountability Board.

Status:
Implementation completed via issuance of updated form reflecting recommendations.

Task Force Recommendation:
- **Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole.**

Implementation:
On February 10, 2021, updates were completed on Policy 311. Sections 311.5 and 311.6 were modified to reflect the above limitations to warrantless searches. The above policies were reviewed and modified in line with the task force recommendations and departmental goals to build trust and collaborate with the community to address crime and safety concerns.

Status:
Recommendation implemented. The update to Policy 311 limits the searches conducted on individuals on supervised release status. On April 18, 2022, the Public Safety Committee made a recommendation for a policy change to this recommendation. On July 26th, 2022 the City Council approved Policy 311 and on August 2nd, 2022 the policy was updated and released. The Department has trained on these updates and will continue to assess and review the impacts of these searches in consideration and support of the tenets of FIP.

Task Force Recommendation:
- **Address Profiling by Proxy (PAB Policy Development, Dispatcher Training).**

Implementation:
The Communications Center Operation Manual has been amended to address handling cases involving profiling by proxy. All dispatchers have reviewed the amended manual and are instructed to be cognizant and screen for profiling by proxy calls.

Status:
Recommendation implemented. Berkeley Police Department will continue to educate and train dispatchers on how to identify and address biased based reporting. Officers and supervisors are also expected to screen profiling by proxy calls. The Department as a whole will continue to seek out and train on anti-bias, implicit bias, and profiling by proxy topics to strengthen our ability to identify and address biased based reporting.

Task Force Recommendation:
- **Fire racist police officers identified through social media and other media screens.**

Implementation:
The following existing policies dictate procedures for investigating employees in this area; these policies adhere to due process and Government Section 3300:

> *Policy 1029 (Employee Speech, Expression and Social Networking) provides accountability to employee personal social media posts. Section 1029.4(b) states "Speech or expression that, while not made pursuant to an official duty, is significantly link to, or related to, the Berkeley Police Department and tends to compromise or damage the mission, function, or reputation of professionalism of the Berkeley police Department or its employee.*

> *PR 232 (Controversial Discussion), PR 235 (Acts –Statements-By employees), PR 238 (Organizational Membership), and PR 250 (enforcement of Law, Impartiality) are also policies that provide accountability for any racist behaviors.*

The above policies were reviewed in light of the task force recommendations and found to provide necessary authority to investigate allegations of racism. Departmental policy clearly identifies discrimination based upon a person's race as misconduct, and requires reporting and prompt investigating of any allegation of racism. Any employee who becomes aware of or observes any discrimination on the basis of a protected class is required to notify a supervisor by the end of their shift or within 24 hours if they are off duty.

***Status*:**
Recommendation implemented, however the Berkeley Police Department is committed to continuing to explore additional lawful methods to identify and address potentially racist behaviors or actions by our members. If at any time the police department becomes aware of any issues related to these concerns, the matter would be thoroughly investigated and employees will be held accountable.

Task Force Recommendation:
- **Require regular analysis of BPD stop, search, and use of force data;**

Implementation:
The Open Data Portal (ODP) is a public facing website that gives the public access to police data and is accessible through the City's website. This allows for open and independent analysis and review to foster police accountability and transparency.

The Department will not only collect and report on stop, search and use of force data, but will regularly analyze the data via the Data Analyst Team. That analysis will at a minimum help direct policy, training, and resource allocation.

Status:
Implementation of recommendation complete and the Department will continue ongoing evaluation and data sharing. BPD is committed to transparency and is continuously exploring different ways to provide the public with access to more police data. The Data and Policy Analysis Team developed a Transparency Hub that will facilitate independent review and analysis of police data. This hub was launched after several community and internal stakeholder groups had an opportunity to view and collaborate on design. The Transparency Hub hosts BPD's Open Data Portal along with tools to help the public visualize and analyze the department's data, including interactive dashboards summarizing stop and search data, calls for service, and use of force data. The Transparency Hub updates in near-real time and gives the public access to datasets reaching further back in time than had been available. In the next phase of implementation there will be a 'Crime Mapper' page on the Transparency Hub that will include additional data on cases.

Task Force Recommendations:
- **Make resources on police-civilian encounters more publicly available such as through RAHEEM.org;**
- **For <u>any individual detained</u>, BPD officers <u>shall provide</u> a business card with information on the commendation and complaint process with the Police Accountability Board and the Berkeley Police Department, Internal Affairs Bureau.**

Implementation:
BPD Officers provide business cards to all detained individuals with information, a QR code and links to the BPD website which provide community members with information on making a commendation or complaint about an interaction with BPD. In addition to the information on how to make a complaint, a link is provided to the ACLU webpage containing information on police-civilian encounters.

Status:
Recommendation implemented. All business cards will continue to be printed with the above information. These resources ensure police accountability as well as provide ways the community can comment on the service BPD has provided.

Refer the following recommendations summarized below to the Reimagine Public Safety process

Task Force Recommendations:
- **Create a formalized feedback system to gauge community response to ongoing reforms and ensure this constructive input system is institutionalized with the Police Review Commission or its successor and includes a basic report card and quarterly neighborhood check-ins; Conduct a baseline community survey**

  Implementation:
  BPD actively supported and participated in the work of the Reimagine Public Safety Task Force by providing data and information, answering questions, providing hands-on experience and discussing opportunities, impacts and effects of recommendations. Several community surveys were conducted by consultants as part of the overall Reimagine Public Safety process.

  Status:
  Initial implementation complete. To support feedback systems, the Berkeley Police Department will be seeking ongoing community input and feedback around reform efforts via the Transparency Hub.

Acknowledge and reaffirm the following recommendations summarized below that are already underway

Task Force Recommendation:
- **BPD released stop, arrest, calls for service and use of force data from 2012 to present to the Working Group;**

  Implementation:
  The police department released the requested historical data in December of 2020. BPD stop, arrest, and calls for service data are regularly updated in the Open Data Portal and will be updated in near real time on the Transparency Hub.

  Status:
  Recommendation implemented.

Task Force Recommendation:
- **Fund and implement a specialized care unit for mental health crises;**

  Implementation:
  The City has contracted with a consulting firm, RDA Consulting, to conduct a feasibility study for a specialized care unit. The study has concluded; refer to below supporting materials for link to the final report from RDA Consulting.

Status:
Implementation in progress and being managed by the Health, Housing and Community Services (HHCS) Department. While the work to create a Specialized Care Unit continues, three community-based contracts managed by HHCS have been initiated to provide interim services.

Task Force Recommendation:
- **Conduct a Capacity Study of police calls and responses and use of officer time outside of case work.**

Implementation:
The City's Auditor's report was released which analyzed Computer Aided Dispatch data. Recommendations from this analysis were provided to the Police Department and findings were referred to the Reimagine Public Safety Task Force.

Status:
Implementation in progress. An assessment of overall staffing levels as well as patrol beat specific analysis has been referred to the budget process via the Council's direction on Reimagining Public Safety. Internally the Data Analysts Team has been directed to continue their work to refine the way and type of data that is collected, and analyze call response time to support the likely upcoming consultant work.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS
There are no identifiable environmental effects or opportunities associated with the subject of this report.

POSSIBLE FUTURE ACTION
The Police Department will continue to work toward the full implementation of the Task Force recommendations.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION
Staff time and additional training time to be determined at a later date.

CONTACT PERSON
Jennifer Louis, Interim Chief of Police, (510) 981-5700

Supporting Materials:

1: Berkeley Police Policy and Training Materials
https://berkeleyca.gov/safety-health/police/policy-training-materials

2: California Legislative Information
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=13519.4.&nodeTreePath=7.5.1.2&lawCode=PEN

3. Reimagine Task Force and National Institute for Criminal Justice Reform (NICJR) Survey
 https://berkeley-rps.org/wp-content/uploads/2021/10/Berkeley-Community-Engagement-Report-v7.pdf

4. RDA Consulting Final Report on Specialize Care Unit
https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_Commissions/Berkeley-MH-SCU_Final-Recommendations_FINAL.pdf