

Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA**

**Wednesday, November 9, 2016
7:00 P.M.**

**South Berkeley Senior Center
2939 Ellis Street, Berkeley**

- 1. CALL TO ORDER & ROLL CALL**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**
(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 the agenda or any matter within the PRC's jurisdiction at this time.)
- 4. APPROVAL OF MINUTES**
Regular Meeting of October 26, 2016
- 5. CHAIR'S REPORT**
- 6. PRC OFFICER'S REPORT**
Status of complaints; other items.
- 7. CHIEF OF POLICE'S REPORT**
Crime, budget, staffing, training updates, and other items.
- 8. OLD BUSINESS (discussion & action)**
 - a. Status of General Order W-1, Right to Watch and consideration of Lexipol Policy 426.
 - b. Review of BPD marijuana enforcement report.
From: Commissioner Bernstein
(See October 13, 2016 packet.)
 - c. Handout on significant laws and court cases affecting scope and powers of the Berkeley PRC; discussion of applicability to aspects of the BOI process.
From: PRC Officer
(See October 26, 2016 packet.)

- d. Commendations of BPD personnel January through June 2016.
From: PRC Officer
(See October 26, 2016 packet.)

9. NEW BUSINESS (discussion & action)

- a. Achieving agreement with BPD on consulting with PRC on all new General Orders and changes to existing General Orders.
From: Commissioner Lippman

10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)

- a. General Orders C-64, etc. Subcommittee
Schedule next meeting date or consider dissolving.
- b. Fair & Impartial Policing Subcommittee
Update; approve outreach letter; next meeting date November 14, 2016.
- c. Mutual Aid Pacts Subcommittee
Update; schedule next meeting date.
- d. Media Credentialing Subcommittee
Update; schedule next meeting date.
- e. Surveillance and Community Safety Ordinance Subcommittee
Update; schedule next meeting date.
- f. Outreach Subcommittee
Consider additional appointment; schedule meeting date.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

(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 the agenda at this time.)

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 matters:

13. REVIEW OF CALOCA DECISION

Complaint #2380 *(Decision and brief to be distributed during closed session.)*

End of Closed Session

14. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, 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 PRC 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 PRC Secretary for further information.

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

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the Police Review Commission, located at 1947 Center Street, 1st floor, during regular business hours.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

PRC REGULAR MEETING ATTACHMENTS

November 9, 2016

MINUTES

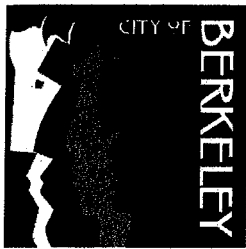
October 26, 2016 Regular Meeting Page 7

AGENDA-RELATED

Item 8.a – Memo from PRC Officer to the Commission dated October 28, 2016 re Chronology of PRC Discussions on the Right to Watch General Order. Page 13

COMMUNICATION(S)

Brief: The Science of Policing Equity dated October 2016. Page 23



Police Review Commission (PRC)

**POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(unapproved)**

**Wednesday, October 26, 2016
7:00 P.M.**

**South Berkeley Senior Center
2939 Ellis Street, Berkeley**

1. CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:06 P.M.

Present: Commissioner George Perezvelez (Chair)
Commissioner Terry Roberts (Vice Chair)
Commissioner Kimberly DaSilva
Commissioner Jerry Javier
Commissioner George Lippman
Commissioner Michael Sherman
Commissioner Ari Yampolsky (arrived 7:25 p.m.)

Absent: Commissioners Alison Bernstein, Kad Smith.

PRC Staff: Katherine J. Lee, PRC Officer

BPD Staff: Lt. Mike Durbin, Sgt. Ben Cardoza, Sgt. Sean Ross

2. APPROVAL OF AGENDA

The agenda was approved by general consent.

3. PUBLIC COMMENT

There was 1 speaker.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of October 13, 2016

Moved/Seconded (Sherman/Lippman) **Motion Carried**

Ayes: DaSilva, Javier, Lippman, Perezvelez, Roberts, Sherman.

Noes: None **Abstain:** None **Absent:** Bernstein, Smith, Yampolsky

5. CHAIR'S REPORT

None.

6. PRC OFFICER'S REPORT

- Case deadlines report distributed. One new case filed since the last meeting.
- PRC Officer sat on interview panel for investigator for BART Office of Independent Auditor.
- Only one meeting next month, November 9.
- PRC Officer will be on vacation next week.

7. CHIEF OF POLICE'S REPORT 10:08

Lt. Durbin reported on behalf of Chief Greenwood:

- 168 sworn. Over 20 in background investigations. Chief interviewed 4 candidates last week and made 4 job officers to laterals. Focus still to hire the best and also achieve diversity; the four are Hispanic female; Hispanic male; Black female, White male.
- Increase in robberies in Northeast part of town last few weeks; uptick in auto burglaries in West.
- Crowd control training Nov. 3; the second group of three. Will have direct contact with trainers on that date and get immediate feedback on the new G.O. [C-64]. Not waiting for 3rd group before changes incorporated.
- Commander's Guide has gone to Frankel for distribution to Command staff; they'll have a week from tomorrow to review; and then give feedback. PRC will have input before finalized.
- CPE report from Chief Greenwood: CPE has our stop data and related policies, but have yet written our report. Most of their energies went into recently-completed Austin PD stop data report, which is available for viewing on the internet; search for White House data initiative and Austin PD report. Gives you an idea what our report will look like. CPE unable to give a time frame.
- Chief Greenwood will be forwarding 5 years of use-of-force data for CPE to analyze.

8. OLD BUSINESS (discussion & action)

- a. Status of General Order W-1, Right to Watch.
(Item postponed to the next meeting to include consideration of Lexipol Policy 426.)
- b. Review draft of response to City Manager's September 12, 2016 letter regarding the standard of proof used in BOI hearings.
(Item postponed to the next meeting.)
- c. Policy regarding publication of communications from the public to the PRC – continue discussion on form and content of reporting of informal and formal complaints to Commission.

Motion to accept the proposal of the PRC officer as set forth in her memo of October 21, 2016, and that, as to the quarterly digest of formal

complaints to be discussed confidentially in closed session, commissioners should see subject officer's names.

Moved/Seconded (Lippman/Yampolsky) **Motion Carried**

Ayes: Javier, Lippman, Roberts, Sherman, and Yampolsky.

Noes: DaSilva, Perezvelez Abstain: None Absent: Bernstein, Smith

Motion to ask the PRC officer to look into the advisability of furnishing members of a BOI with a subject officer's appearance at prior BOIs and the outcome, if any.

Moved/Seconded (Yampolsky/Javier) **Motion Carried**

Ayes: DaSilva, Javier, Lippman, and Yampolsky.

Noes: Perezvelez, Roberts, Sherman Abstain: None

Absent: Bernstein, Smith

- d. Review of BPD marijuana enforcement report.

(Item postponed to the next meeting.)

- e. Certificate of appreciation for former Chief Meehan

Motion to accept the recommended wording of a certificate of recognition for former Chief Meehan, and to authorize the PRC staff to format and frame the certificate, and send it to him.

Moved/Seconded (Sherman/Roberts) **Motion Carried**

Ayes: DaSilva, Javier, Lippman, Perezvelez, Roberts, Sherman, and Yampolsky.

Noes: None Abstain: None Absent: Bernstein, Smith

- f. Proposed changes to Standing Rules regarding procedures for election of PRC Chair and Vice-Chair

Motion to amend the standing rules by approving the proposal appearing as agenda item #8.f., with three amendments to Sections 2 g) i, ii, and iii.

Moved/Seconded (Roberts/Sherman) **Motion Carried**

Ayes: DaSilva, Javier, Lippman, Perezvelez, Roberts, Sherman, and Yampolsky.

Noes: None Abstain: None Absent: Bernstein, Smith

- g. Commission's list of tasks and prioritization.

By general consent, the Commission agreed to make ABC enforcement in the South Campus area a Group III priority, to be discussed when the agenda is less full, and to make BPD's recruitment efforts a Group III priority unless a commissioner wishes to move it up.

PRC Officer has a plan to work with BPD staff on the policy review on searches of vehicles and persons based on odor of marijuana, so no need to prioritize.

9. NEW BUSINESS (discussion & action)

a. Review of handout on significant laws and court cases affecting scope and powers of the Berkeley PRC; discussion of applicability to aspects of the BOI process.

(Discussion to be continued at next meeting.)

b. Commendations of BPD personnel January through June 2016.

(Item postponed to the next meeting.)

10. SUBCOMMITTEE REPORTS AND RECOMMENDATIONS (discussion & action)

a. General Orders C-64, etc. Subcommittee
No action.

b. Fair & Impartial Policing Subcommittee
Report given.

Motion to approve the Subcommittee's outreach letter, as amended.

Moved/Seconded (Lippman/Sherman) **Motion Carried**

Ayes: DaSilva, Javier, Lippman, Perezvelez, Roberts, Sherman, and Yampolsky.

Noes: None

Abstain: None

Absent: Bernstein, Smith

c. Mutual Aid Pacts Subcommittee
Report given.

d. Media Credentialing Subcommittee
PRC Officer to schedule meeting.

e. Surveillance and Community Safety Ordinance Subcommittee
Report given. Next meeting November 2.

f. Outreach Subcommittee
No action.

11. ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS

Attached.

12. PUBLIC COMMENT

There was one 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 matters:

13. REVIEW OF CALOCA DECISION

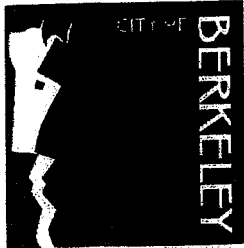
Complaint #2380

(Item postponed to the next meeting.)

End of Closed Session


14. ADJOURNMENT

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



Police Review Commission (PRC)

October 28, 2016

To: Police Review Commission
From: Katherine J. Lee, PRC Officer 
Re: Chronology of PRC Discussions on the Right to Watch General Order

July 21, 2015 BPD Issues General Order W-01, The Right to Watch [attachment a], which replaces Training & Info Bulletin No. 91 [b].

Sept. 15, 2015 PRC conveys concerns to Chief Meehan about the change being made without consulting PRC [c].

Jan. 13, 2016 Capt. Harris informs Commission at its meeting that a revised G.O. W-01 will be presented for the PRC's review at its Feb. 24 meeting.

Feb. 24, 2016 Draft revised G.O. W-01 from BPD [d] is agendized. PRC Officer supplies a version showing the changes on the draft from the July 21, 2015 version [e]. PRC discusses but takes no action.

March 9, 2016 PRC discusses again, without taking action.

March 23, 2016 A community member introduces SFPD's General Order 5.07, Rights of Onlookers [attached to f]. PRC votes to recommend that the BPD adopt the wording of the SFPD G.O., with some minor changes.

March 31, 2016 PRC's recommendation conveyed to Chief Meehan [f].

Sept. 14, 2016 Chief Meehan tells Commission at its meeting that his staff's work is done and the recommendation is on his desk.

Oct. 24, 2016 In response to PRC Officer's inquiry about the status of this G.O., Chief Greenwood sends her draft Policy 426, Public Recording of Law Enforcement Activity [g].

Oct. 26, 2016 Policy 426 distributed to Commission. No action taken; to be agendized for November 9 meeting.

In the meantime, the G.O. dated July 21, 2015 [a], has been in effect.

cc: Interim Chief Andy Greenwood

1947 Center Street, 1st Floor, Berkeley, CA 94704 • Tel: 510-981-4950 • TDD: 510-981-6903 • Fax: 510-981-4955
Email: prc@ci.berkeley.ca.us Website: www.ci.berkeley.ca.us/prc/

BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 21, 2015

GENERAL ORDER W-01

SUBJECT: THE RIGHT TO WATCH

PURPOSE

- 1 - The purpose of this General Order is to adopt policies and procedures regarding a citizen's right to observe, photograph or video record officers during the course of the officers' public duties.

POLICY

- 2 - It shall be the policy of the Berkeley Police Department to minimize restrictions on public observation, photographing or video recording of police officers' performance of their duties, while ensuring the safety of the public and the officers.

In all instances, it is expected that officers will conduct themselves in a professional manner, exercising good judgment and treating all persons courteously. Officers should restrict the practice of requesting that onlookers withdraw only to those instances where a potential threat to safety is involved.

PROCEDURES

- 3 - At the scene of an arrest or other inquiry being conducted by police officers in public, citizens have the right to observe; photograph and video record the officers from a safe distance. Citizens also have the right to communicate with the detained person, provided, however:
 - a. that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148 prohibits delaying or obstructing any peace officer engaged in the duties of his/her office.
 - b. that the observer's actions or communications do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's attention. An officer may instruct an observer to maintain a safe distance from the scene, with the understanding that what constitutes a "safe" distance may vary depending on the circumstances.
 - c. that the confidentiality of the matter being discussed with a suspect, victim, witness, or reporting party is not compromised except with concurrence of the citizen and the officer involved.

a.

BERKELEY POLICE DEPARTMENT TRAINING AND INFORMATION BULLETIN



DATE: August 23, 1983

NUMBER: 91

SUBJECT: THE RIGHT TO WATCH

At the scene of an arrest or other inquiry being conducted by police officers in public, citizens have the right to observe the behavior of officers. These persons also have the right to communicate with the detained person, provided, however:

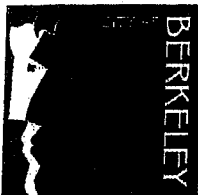
- that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148 prohibits delaying or obstructing any public officer engaged in the duties of his/her office.
- that the observer's actions do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's investigation.
- that the confidentiality of the matter being discussed with a suspect/victim/witness is not compromised except with concurrence of the citizen and the officer involved.

It is Departmental policy to set the least possible restriction on public observation of police officer conduct.

In all instances, it is expected that officers will conduct themselves in a professional manner, exercising good judgment and treating all persons courteously officers should restrict the practice of requesting onlookers to withdraw only to those instances where a threat to safety is involved.

RONALD D. NELSON
Chief of Police

b.



Police Review Commission (PRC)

September 15, 2015

To: Michael Meehan, Chief of Police

From: Katherine J. Lee, Police Review Commission Officer

Re: Revision of "The Right to Watch" Policy

The Police Review Commission has asked me to convey its concerns regarding the recent revision of The Right to Watch policy, as reflected in new General Order W-01, issued on July 21, 2015.

This policy holds particular significance to civilian members of the community, because it governs how and under what circumstances they are allowed to observe and record police officers in the performance of their duties. The ability to watch is an important means by which the community can hold officers accountable. Yet, the policy was revised from former Training & Information Bulletin No. 91 without input from or consultation with the PRC or any other public body, as far as the PRC is aware.

Therefore, the PRC voted unanimously at its September 9, 2015 meeting to request that, until the community and the PRC are given an opportunity to review the changes to The Right to Watch policy, that the BPD revert to following The Right to Watch guidelines as set forth in Training & Information Bulletin No. 91.

cc: Captain Cynthia Harris
Dee Williams-Ridley, Interim City Manager
Gil Dong, Interim Deputy City Manager

C.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: TBD

GENERAL ORDER W-01

Draft

SUBJECT: THE RIGHT TO WATCH

COMMUNICATION No. 1299

PURPOSE

- 1 - The purpose of this Order is to adopt policies and procedures regarding citizen's right to observe, photograph or video record officers during the course of their public duties.

POLICY

- 2 - It shall be the policy of this Department to set the least possible restriction on public observation, photographing or video recording of police officer's performing their duties.

In all instances, it is expected that officers will conduct themselves in a professional manner, exercising good judgment and treating all persons courteously. Officers should restrict the practice of requesting onlookers to withdraw only to those instances where a threat to safety is involved.

PROCEDURES

- 3 - At the scene of an arrest or other inquiry being conducted by police officers in public, citizens have the right to observe; photograph and video record the behavior of officers. These persons also have the right to communicate with the detained person, provided, however:
 - a. that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148 prohibits delaying or obstructing any peace officer engaged in the duties of his/her office.
 - b. that the observer's actions do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's investigation. An officer may instruct an observer to maintain a safe distance from the scene.
 - c. that the confidentiality of the matter being discussed with a suspect/victim/witness is not compromised except with concurrence of the citizen and the officer involved.
 - d.

BERKELEY POLICE DEPARTMENT

DATE ISSUED: July 21, 2015

GENERAL ORDER W-01

SUBJECT: THE RIGHT TO WATCH

PURPOSE

- 1 - The purpose of this General Order is to adopt policies and procedures regarding a citizen's right to observe, photograph or video record officers during the course of the officers' public duties.

POLICY

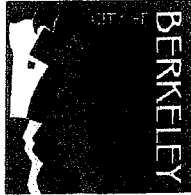
- 2 - It shall be the policy of the Berkeley Police Department to ~~minimize restrictions~~ *set the least possible restriction* on public observation, photographing or video recording of police officers' performance of their duties, ~~while ensuring the safety of the public and the officers.~~

In all instances, it is expected that officers will conduct themselves in a professional manner, exercising good judgment and treating all persons courteously. Officers should restrict the practice of requesting that onlookers withdraw only to those instances where a potential threat to safety is involved.

PROCEDURES

- 3 - At the scene of an arrest or other inquiry being conducted by police officers in public, citizens have the right to observe; photograph and video record the *behavior of* ~~officers from a safe distance.~~ Citizens also have the right to communicate with the detained person, provided, however:
 - a. that the observer does not interfere physically or verbally with the investigation being conducted by the officer. Penal Code Section 148 prohibits delaying or obstructing any peace officer engaged in the duties of his/her office.
 - b. that the observer's actions or communications do not jeopardize the safety of the officer conducting the inquiry nor the safety of the person who is the subject of the officer's *investigation* ~~attention.~~ An officer may instruct an observer to maintain a safe distance from the scene, ~~with the understanding that what constitutes a "safe" distance may vary depending on the circumstances.~~
 - c. that the confidentiality of the matter being discussed with a suspect, victim, witness, or reporting party is not compromised except with concurrence of the citizen and the officer involved.

e.



Police Review Commission (PRC)

March 31, 2016

To: Michael Meehan, Chief of Police

From: Katherine J. Lee, PRC Officer *KJL*

Re: PRC Recommendation Regarding General Order on The Right to Watch

As you are aware, the Police Review Commission has spent several recent meetings discussing the BPD's General Order W-01, The Right to Watch. This policy has undergone intense scrutiny because the PRC considers it an important tool in holding police officers accountable. Even though BPD command staff told the PRC that the General Order issued on July 21, 2015 was not intended to narrow the public's right to observe and record, from what was allowed under Training & Information Bulletin No. 91, the PRC remained concerned.

Thus, the PRC carefully considered BPD's proposed revision to G.O. W-01. At the PRC's March 23, 2016 meeting, the Commission was presented with the San Francisco Police Department's General Order 5.07, Rights of Onlookers. After studying it, the Commission considered the following motion:

That the Police Review Commission recommend to the Berkeley Police Department that, in lieu of the draft General Order W-01, the BPD adopt the existing SFPD General Order 5.07, except that: 1) in Section I.B.2. of that order, the word "investigation" replace "interrogation"; and 2) references to jurisdiction-specific codes and orders be changed to reflect equivalent Berkeley policies.

This motion passed unanimously (with three Commissioners absent).

A copy of the SFPD's General Order 5.07 is attached for your convenience. Please advise if you have questions or wish to further discuss this with the PRC.

Attachment

cc: Police Review Commissioners (w/o attachment)

f.

San Francisco Police Department 5.07
GENERAL ORDER Rev. 02/22/95

RIGHTS OF ONLOOKERS

This order establishes policies regarding when persons are permitted to remain as onlookers, their right to overhear conversations between the officer and suspect, and their right to act as a witness.

I. POLICY

A. WITNESSING STOPS, DETENTIONS, ARRESTS. It is the policy of this Department that persons not involved in an incident be allowed to remain in the immediate vicinity to witness stops, detentions and arrests of suspects occurring in public areas, except under the following circumstances:

1. When the safety of the officer or the suspect is jeopardized.
2. When persons interfere or violate law.
3. When persons threaten by words or action, or attempt to incite others to violate the law.

B. OVERHEARING CONVERSATION. If the conditions at the scene are peaceful and sufficiently quiet, and the officer has stabilized the situation, persons shall be allowed to approach close enough to overhear the conversation between the suspect and the officer, except when:

1. The suspect objects to persons overhearing the conversation.
2. There is a specific and articulable need for confidential conversation for the purpose of police interrogation.

C. INQUIRIES

1. Persons shall be permitted to make a short, direct inquiry as to the suspect's name and whether the officer or the suspect wishes a witness. The suspect shall be allowed to respond to the inquiry.
2. If a citizen is a witness to the activity for which the suspect was detained or arrested, the officer may request his/her name; however, the citizen is not compelled to disclose such information.

D. BYSTANDER FILMING OF OFFICER-SUSPECT CONTACTS. It is increasingly common for bystanders, who are not involved in any criminal

DGO 5.07

Rev. 02/22/95

activity, to record contacts between officers and citizens, during which officers are detaining, citing or arresting a suspect or engaging in crowd control at a demonstration. Bystanders have the right to record police officer enforcement activities by camera, video recorder, or other means (except under certain narrow circumstances as set forth in Sections A and B above).

1. An officer shall not seize, compel or otherwise coerce production of these bystander recordings by any means without first obtaining a warrant. Without a warrant, an officer may only request, in a non-coercive manner, that a bystander voluntarily provide the film or other recording. These requests should be made only if the officer has probable cause to believe that a recording has captured evidence of a crime and that the evidence will be important to prosecution of that crime. If a bystander refuses to voluntarily provide the recording, an officer may request the person's identity as provided in Section C., 2., above.

2. If a bystander voluntarily provides his or her recording and/or equipment, the officer shall provide the bystander with a receipt (SFPD 315). The receipt shall contain a written statement verifying that the recording and/or equipment has been voluntarily provided to the Department and shall be signed by the bystander.

E. VIOLATIONS/COMPLIANCE. As an alternative to arresting an onlooker who is in violation of Penal Code Section 148 or other related offenses (e.g., 647 c P.C., 22 Municipal Police Code) officers may order onlookers to "move on"; however, the person shall not be ordered to move any farther distance than is necessary to end a violation (see DGO 5.03, Investigative Detentions and DGO 6.11, Obstruction of Streets and Sidewalks). Persons who believe that an officer did not comply with the provisions of this order shall be referred to an appropriate supervisor or to the Office of Citizen Complaints.

References

- DGO 5.03, Investigative Detentions
- DGO 6.02, Physical Evidence
- DGO 6.11, Obstruction of Streets and Sidewalks
- DGO 6.15, Property Processing

DRAFT

Public Recording of Law Enforcement Activity

426.1 PURPOSE AND SCOPE

This policy provides guidelines for handling situations in which members of the public photograph or audio/video record law enforcement actions and other public activities that involve members of this department. In addition, this policy provides guidelines for situations where the recordings may be evidence.

426.2 POLICY

The Berkeley Police Department recognizes the right of persons to lawfully record members of this department who are performing their official duties. Members of this department will not prohibit or intentionally interfere with such lawful recordings. Any recordings that are deemed to be evidence of a crime or relevant to an investigation will only be collected or seized lawfully.

Officers should exercise restraint and should not resort to highly discretionary arrests for offenses such as interference, failure to comply or disorderly conduct as a means of preventing someone from exercising the right to record members performing their official duties.

426.3 RECORDING LAW ENFORCEMENT ACTIVITY

Members of the public who wish to record law enforcement activities are limited only in certain aspects.

- (a) Recordings may be made from any public place or any private property where the individual has the legal right to be present (Penal Code § 69; Penal Code § 148).
- (b) Beyond the act of photographing or recording, individuals may not interfere with the law enforcement activity. Examples of interference include, but are not limited to:
 - 1. Tampering with a witness or suspect.
 - 2. Inciting others to violate the law.
 - 3. Being so close to the activity as to present a clear safety hazard to the officers.
 - 4. Being so close to the activity as to interfere with an officer's effective communication with a suspect or witness.
- (c) The individual may not present an undue safety risk to the officers, him/herself or others.

426.4 OFFICER RESPONSE

Officers should promptly request that a supervisor respond to the scene whenever it appears that anyone recording activities may be interfering with an investigation or it is believed that the recording may be evidence. If practicable, officers should wait for the supervisor to arrive before taking enforcement action or seizing any cameras or recording media.

Whenever practicable, officers or supervisors should give clear and concise warnings to individuals who are conducting themselves in a manner that would cause their recording or behavior to be unlawful. Accompanying the warnings should be clear directions on what an

Public Recording of Law Enforcement Activity

individual can do to be compliant; directions should be specific enough to allow compliance. For example, rather than directing an individual to clear the area, an officer could advise the person that he/she may continue observing and recording from the sidewalk across the street.

If an arrest or other significant enforcement activity is taken as the result of a recording that interferes with law enforcement activity, officers shall document in a report the nature and extent of the interference or other unlawful behavior and the warnings that were issued.

426.5 SUPERVISOR RESPONSIBILITIES

A supervisor should respond to the scene when requested or any time the circumstances indicate a likelihood of interference or other unlawful behavior.

The supervisor should review the situation with the officer and:

- (a) Request any additional assistance as needed to ensure a safe environment.
- (b) Take a lead role in communicating with individuals who are observing or recording regarding any appropriate limitations on their location or behavior. When practical, the encounter should be recorded.
- (c) When practicable, allow adequate time for individuals to respond to requests for a change of location or behavior.
- (d) Ensure that any enforcement, seizure or other actions are consistent with this policy and constitutional and state law.
- (e) Explain alternatives for individuals who wish to express concern about the conduct of Department members, such as how and where to file a complaint.

426.6 SEIZING RECORDINGS AS EVIDENCE

Officers should not seize recording devices or media unless (42 USC § 2000aa):

- (a) There is probable cause to believe the person recording has committed or is committing a crime to which the recording relates, and the recording is reasonably necessary for prosecution of the person.
 1. Absent exigency or consent, a warrant should be sought before seizing or viewing such recordings. Reasonable steps may be taken to prevent erasure of the recording.
- (b) There is reason to believe that the immediate seizure of such recordings is necessary to prevent serious bodily injury or death of any person.
- (c) The person consents.
 1. To ensure that the consent is voluntary, the request should not be made in a threatening or coercive manner.
 2. If the original recording is provided, a copy of the recording should be provided to the recording party, if practicable. The recording party should be permitted to be present while the copy is being made, if feasible. Another way to obtain the evidence is to transmit a copy of the recording from a device to a department-owned device.

Recording devices and media that are seized will be submitted within the guidelines of the Property and Evidence Policy.



The Science of Policing Equity

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Public trust in law enforcement is alarmingly low in many communities nationwide, particularly in those experiencing violent crime coupled with intensive police presence. Research shows that positive police-community relationships are crucial for safer communities: citizens are more likely to engage as witnesses and as partners in crime reduction if they believe in the legitimacy of police as equitable and impartial agents of the law.¹ Yet many community members perceive law enforcement activities to be targeted toward—and biased against—nonwhite people.

Communities wracked by highly publicized shootings of unarmed people of color have called for both greater transparency and accountability on the part of the police. Likewise, law enforcement executives desire hard metrics on current practices and a way to measure changes in response to policies aimed at reducing bias and improving police-community relations.

This brief aims to address the needs of both communities through collaboration between two initiatives: The Center for Policing Equity's National Justice Database (NJD) and the White House's Police Data Initiative (PDI; see text box). Both NJD and PDI emphasize the importance of collecting and making transparent police data to measure fairness and improve policing equity. NJD also emphasizes applying a rigorous analytic framework to examination of that data.

This brief applies the NJD analytic framework to publicly available PDI data. It focuses on the Austin Police Department (APD) in Texas, one of the first agencies to make its data available through PDI. Importantly, analyses were conducted *independent of any law enforcement agency funding*. In this research brief we present empirical documentation of the degree of racial and ethnic disparities in Austin's policing practices, as well as possible interpretations of such differences.

Our purpose is to demonstrate what can be learned by thoroughly analyzing democratized data. We empirically document the degree of racial and ethnic differences in Austin's policing practices, as well as possible interpretations of such disparities. We hope the brief provides law enforcement officials

with a road map for greater transparency and accountability in police practices, so they can transform agencies to adopt more just and equitable means of promoting public safety.

Highlights

The pages that follow present analyses of APD traffic stops and searches, as well as APD officers' use of force, for the calendar years 2014 and 2015. For both yearly analyses we isolate race and ethnicity, exploring differences in practices and modeling these outcomes of interest while controlling for competing factors, such as place-specific crime rates. The raw data point to disparate treatment of Austin citizens based on race and ethnicity in vehicle stops and in use of force. For use-of-force incidents, black and Hispanic communities remain more likely to experience use of force than white communities after adjusting for community-level differences in crime and poverty.

These findings demonstrate that even in an agency such as the APD, which is instituting reforms aimed at enhancing equity in policing, unwelcome disparities remain, indicating that more work is needed within and beyond law enforcement agencies. Our research also underscores the value of rigorous and impartial analysis of police data—together with public dissemination of the findings—as well as the importance of continual analyses that can help promote and measure change over time.

Collaboration between Two Nationwide Efforts to Increase Policing Equity

Since 2012, the Center for Policing Equity has been working with law enforcement leaders, academics, community advocates, and the Department of Justice to create the National Justice Database (NJD), a National Science Foundation-supported effort to compile national-level statistics about police behavior and develop a rigorous analytic road map for examining police data. NJD's goal is to independently help police and communities learn about disparities in law enforcement and hold departments accountable to them. To date, NJD has received commitments from police departments nationwide, serving 25 percent of the United States population; the data, however, have yet to be made public.

Against this backdrop, President Obama's Task Force on 21st Century Policing launched in May 2015 the Police Data Initiative (PDI), calling on law enforcement agencies across the country to make data publicly available and partner with researchers and technologists to disseminate it. The Police Foundation makes PDI data available through a portal on its website (<https://publicsafetydataportal.org/>). Through such transparency, PDI aims to rebuild trust between communities and police and, ultimately, to reduce crime. Thus far, over 100 law enforcement agencies have committed to release data files on police actions such as stops, searches, arrests, and uses of force. While dozens of agencies and members of the public have accessed these data, few people have analyzed the data.

Through a collaboration between these two nationwide efforts, this brief demonstrates how the NJD analytic framework can be applied to PDI data to identify the presence (or absence) of unwarranted racial disparities in officer stops, searches, uses of force, and so forth. This brief also shows how the availability of additional police data, advocated by NJD, can increase public knowledge about how to improve policing equity nationwide.

The NJD Analytic Framework

The Austin-specific findings embodied in this brief are an example of the types of questions the NJD analytic framework is designed to answer. The framework aims to distinguish among possible explanations for racial disparities in policing, of which there are three broad classes:

1. **Disparities that arise from community characteristics.** For instance, high crime rates or poverty within a community may draw increased police attention. Individuals within the community may place disproportionately more calls for service to police.
2. **Disparities that arise from police characteristics.** For instance, police may patrol some neighborhoods with less commitment to the dignity of those who live there. Or, deploying more officers to high-crime neighborhoods may produce disproportionately more interactions between police and nonwhite communities.
3. **Disparities that arise from the relationships between communities and police.** For instance, mistrust of law enforcement may incite some communities to flee approaching officers or resist arrest more than other communities do. Similarly, a sense that communities do not trust or respect police may cause officers to feel unsafe or defensive in some neighborhoods.

While the truth likely incorporates elements of each of these explanations, the NJD framework allows departments to learn about how all three contribute to racial disparities. By combining police administrative data with population data (e.g., income, education, racial demographics), police department climate surveys, and community surveys, we can credibly examine the role that each explanation plays in the disparities that both police departments and communities want to reduce.

However, because NJD data on police behavior are neither publicly accessible nor integrated into the PDI rubric, this brief carefully analyzes the role that community-level factors play in racial disparities—that is, explanation 1. The resulting analyses can be used to steer community engagement, relationship building, and continued department reform. Importantly, the persuasive power of analytics grows substantially the longer a department measures and analyzes important indicators. As a result, we encourage the APD, the people of Austin, and all PDI-participating communities to see these analyses as a *first benchmark* against which progress can be measured. With many departments set to receive similar briefs in the coming years, we hope this analytic framework can be a road map for police and communities—establishing where they are now and charting a path toward a more just future.

In fairness, no police department in the country currently collects all the data recommended in the NJD analytic framework (though several departments collect each element of non-survey data). CPE and Urban chose the APD as our partners for this brief because its use-of-force dataset is among the most comprehensive in the country and is the single most comprehensive *publicly available* use-of-force dataset. In addition to its use-of-force dataset, the APD publishes a dataset on citations and arrests resulting from vehicle stops.

The APD does not publish any officer-level data because of officer privacy considerations; police departments rarely make these data public. As a result, we are unable to analyze how much racial disparities are attributable to individual officers (compared to the department or the region). The APD also does not publish data on complaints against officers, so we are unable to examine racial disparities

in complaints using PDI data (Austin's Office of the Police Monitor publishes an annual report on citizen complaints, but these data are not in the PDI portal and thus not subject to analysis here). Additionally, though the APD does make its disciplinary matrix and general orders available to the public, these are not in the PDI portal, so we do not explore questions about policy comprehensiveness in our analyses.

The APD documents, but does not publish data on, pedestrian stops or vehicle stops not resulting in citation or arrest. As a result, we are unable to ask questions about racial disparities in pedestrian stops, and our ability to ask questions about the source of disparities in vehicle stops is limited. We encourage the APD to begin data collection of these fields while noting that new data collections are time consuming, may lower morale in the short term, and require technical infrastructure to aggregate and analyze.

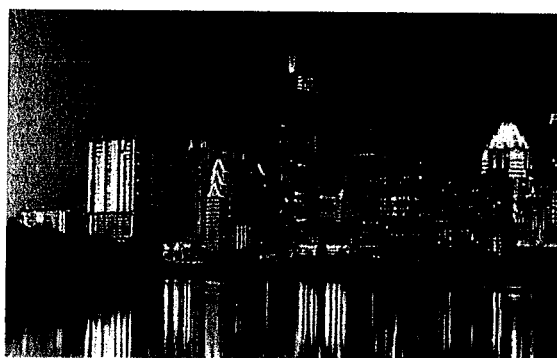
The above description of APD's data holding and publicly available data is offered to demonstrate the tremendous opportunity for greater clarity on fairness in policing that could be afforded by further democratization of policing data. These opportunities are not for the APD alone but for law enforcement agencies nationwide.

The dashboard on the next page illustrates the types of data that could—and arguably should—be collected and disseminated through the PDI portal, whether Austin currently has these data publicly available, and how analyses of these data can answer critical questions that can help move the needle in reducing racial and ethnicity-based bias in policing and enhancing trust between community members and the police. The dashboard is designed to articulate the questions that can be asked of police departments using their data as well as community survey data (while the City of Austin conducts an annual police satisfaction survey of residents, it is not representative of communities most likely to experience violent crime and heavy police presence). The dashboard underscores that because certain data are not currently published through the PDI portal several questions in the NJD analytic framework cannot be posed and answered.

Austin Police Department Data

The Austin Police Department embodies 1,900 officers serving the 11th-largest city in the United States, with 930,000 residents as of 2015. The population of the Austin greater metropolitan statistical area (MSA) is more than double that of the city: 2 million residents, many of whom commute into Austin daily.

In this brief, we focus on two types of Austin police data made available through the PDI portal: vehicle stops that resulted in citation or arrest in 2015, and incidents involving police use of force in 2014. We show total counts of vehicle stops and use-of-force incidents and counts by white, black, and Hispanic race and ethnicity. Over half of Austin MSA's residents are non-Hispanic white (53 percent), nearly a third are Hispanic (32 percent), and less than one-tenth are non-Hispanic black (7 percent). Because urban centers such as Austin experience an



Austin, Texas

Availability of Austin PD Data to Answer NJD Analytic Questions

	Are there racial disparities?	How much are disparities attributable to officers?	How well do officer-level psychologies predict disparities?	What accounts for disparities?	How healthy are officers?	How comprehensive are departmental policies?
Administrative Datasets						
Vehicle Stops	Moderate	Not in PDI	Not in PDI			
Pedestrian Stops	Not in PDI	Not in PDI	Not in PDI			
Use-of-Force	Rich Data	Not in PDI	Not in PDI			
Complaints	Not in PDI	Not in PDI	Not in PDI			
Crime/Calls				Rich Data		
Officer Discretion				Moderate		
Neighborhood				Rich Data		
Police Climate Surveys						
Psychological Health					Not in PDI	
Physical Health					Not in PDI	
Job Health					Not in PDI	
Policy Analyses						
Racial Equity						Not in PDI
Trust						Not in PDI
Reduce Force						Not in PDI
Thorough						Not in PDI
Effective						Not in PDI

influx of regional residents who visit the city for work and recreation, MSA population figures are more appropriate measures to adjust police data counts for exposure to different citizens. Racial and ethnic differences in police data must also be contextualized with other contributing factors, including level of illegal activity, something we model in the use-of-force analysis by using Census tract-level Part I crimes as a proxy.

Vehicle Stops and Searches

Over time, the volume of vehicle stops in Austin resulting in a citation remained fairly constant, at approximately 10,000 stops a month, with one sharp drop during September 2015. The number of

FIGURE 1

Vehicle Stops Resulting in a Citation, 2015

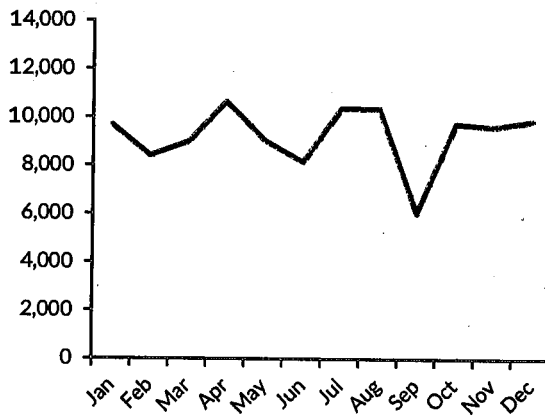
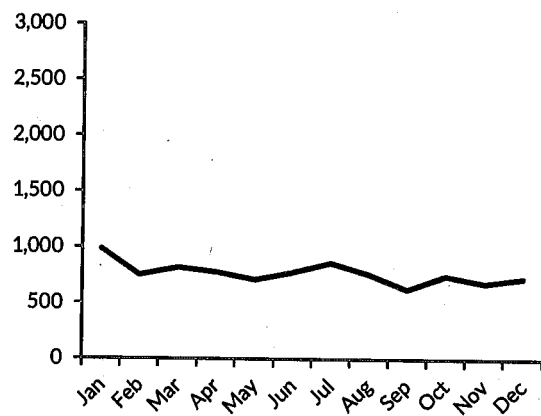


FIGURE 2

Vehicle Stops Resulting in an Arrest, 2015



vehicle stops resulting in an arrest was much lower, averaging 750 a month and remaining fairly constant across time after peaking in January 2015.

VEHICLE STOPS BY RACE OR ETHNICITY

In total, Austin police stopped more white and Hispanic than black drivers in each month of 2015, an expected pattern given the higher share of white and Hispanic residents in the Austin metropolitan area. However, among stops resulting in a citation, more white than Hispanic drivers were stopped each month, while the opposite was true for stops resulting in an arrest. Each month of 2015, a higher number of stopped Hispanic drivers were arrested than either white or black stopped drivers. These counts are not adjusted for differential rates of driving, involvement in illegal activity, or exposure to police.

FIGURE 3

Vehicle Stops Resulting in a Citation by Race or Ethnicity, 2015

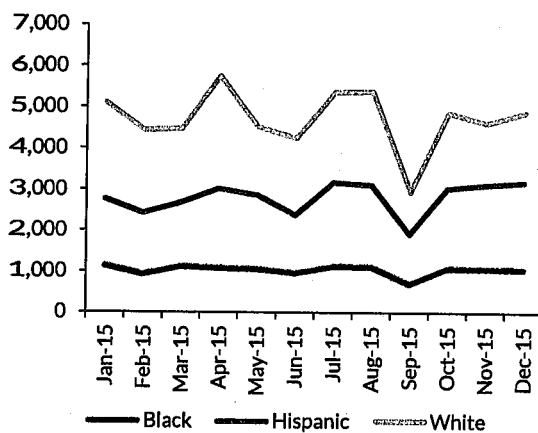
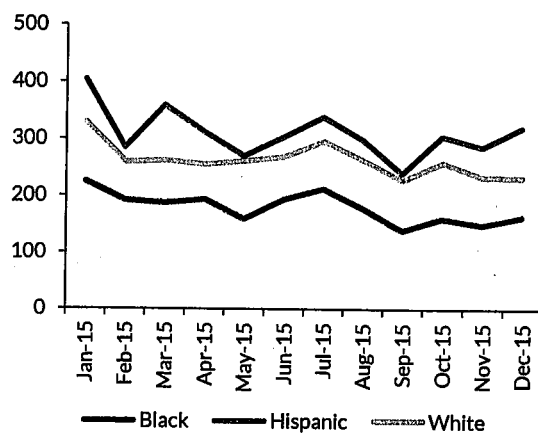


FIGURE 4

Vehicle Stops Resulting in an Arrest by Race or Ethnicity, 2015



When accounting for underlying population, however, we see that rates of vehicle stops resulting in citation or arrest were highest for black drivers throughout the year. In other words, while the fewest number of vehicle stops occurred for black drivers, a higher proportion of black people was stopped than Hispanic or white people. Similar proportions of white and Hispanic drivers experienced vehicle stops resulting in citations, but stop rates resulting in arrests were twice as high among Hispanic drivers as white drivers. Again, these rates are not adjusted for differential rates of driving, involvement in illegal activity, or exposure to police.

FIGURE 5
Per Capita Stops Resulting in a Citation by Race or Ethnicity, 2015

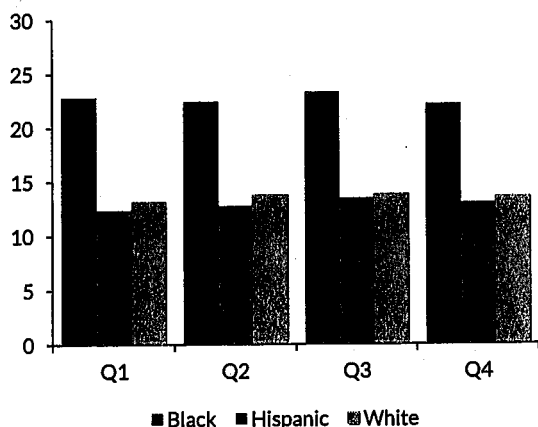
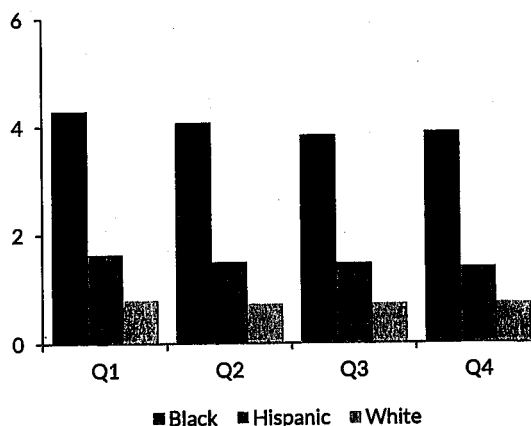


FIGURE 6
Per Capita Stops Resulting in an Arrest by Race or Ethnicity, 2015



VEHICLE SEARCHES BY RACE OR ETHNICITY

Vehicle stops may result in a search following arrest and may precede arrest if reasonably necessary for officer protection (e.g., weapons search), there is probable cause of evidence of crime, or upon the driver's consent. Because only 2 percent of APD's vehicle stops that resulted in a citation involved searches, this section focuses on vehicle stops resulting in arrest.

Three-quarters (76 percent) of APD's arrest stops involved a vehicle search; of those searches, 77 percent were described as occurring for reasons "incidental to arrest." Following *Arizona v. Gant*, 556 U.S. 332 (2009), searches performed incidental to arrest are conducted after an arrest has been made to address continuing safety threats or preserve criminal evidence. Searches performed for other reasons not incidental to arrest, including for "probable cause," as a "frisk for safety," or by driver's "consent," are assumed to have been conducted before arrest and were subjected to greater officer discretion. We focus analysis on these latter searches, which made up 23 percent of those conducted in 2015.

Focusing on searches *not* incidental to arrest, Figure 7 shows the percentage of vehicle stops resulting in a search, broken down by drivers' race/ethnicity. In general, search rates were highest for stopped black drivers and lowest for Hispanic and white stopped drivers. The search rate for black drivers peaked early in 2015 at 32 percent, meaning 1 in 3 stops of black drivers involved a search, and was lowest at the end of 2015, when one in six stops (16 percent) of black drivers resulted in a search.

Search rates for Hispanic and white drivers were generally similar, averaging 16 percent and 14 percent respectively, across the time period. By the end of 2015, the racial gap in percentage of drivers searched by race/ethnicity had closed somewhat.

The APD also records whether contraband (drugs, weapons, cash, alcohol, and “other items”) was recovered from vehicle searches. One in three (32 percent) vehicle searches yielded contraband, compared with almost half (48 percent) of nonincidental vehicle searches. Figure 8 shows the search “hit” rates, or percentage of nonincidental searches resulting in contraband discovery, by race/ethnicity. Although hit rates vary, few discernible patterns of differences by race/ethnicity are evident; hit rates average 47 percent for Hispanic drivers, 49 percent for black drivers, and 50 percent for white drivers.

This lack of hit rate differences can typically be interpreted as evidence of lack of bias in decisions to stop or search,² but in this case, because the data include only cases in which arrests were made, we do not know the rates at which different groups were searched and contraband was *not* found. Consequently, we cannot draw any conclusions about bias from hit rates among arrest stops. Regardless, APD’s hit rates are very high and may be explained, at least in part, by the fact that APD has one of the strictest consent search requirements in the country, for which officers must have probable cause to conduct a search. These hit rates also appear high because they are limited to stops resulting in arrest; other jurisdictions looking at *all vehicle stops* have found hit rates ranging from 7 percent to 34 percent.³

FIGURE 7
Share of Drivers Subject to Nonincidental Searches by Race or Ethnicity, 2015

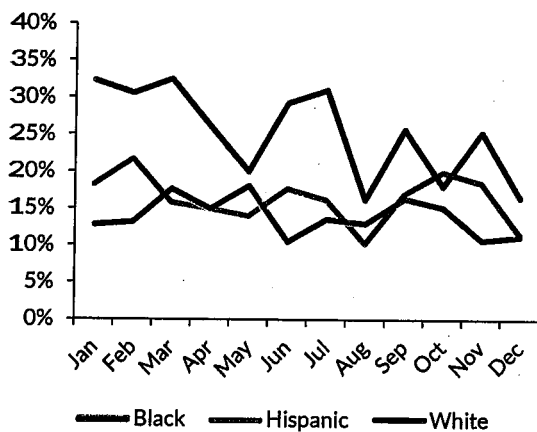
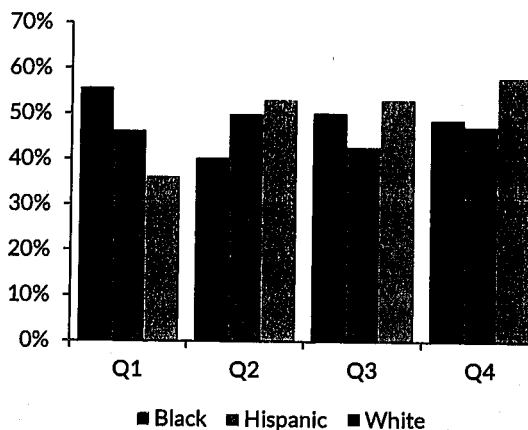


FIGURE 8
Nonincidental Search “Hit” Rates by Race or Ethnicity, 2015



MODELING OFFICER DISCRETION IN VEHICLE STOPS AND SEARCHES

In this section, we present analyses that help us explore whether racial disparities in vehicle stops that lead to citations and arrests are potentially warranted or unwarranted. First, we examine the role of officer discretion in deciding whether to make a stop; second, we model the decision to search a vehicle once a stop is made.

Officer Discretion. To understand whether racial disparities in officer-initiated (discretionary) stops exceed racial disparities in nondiscretionary stops, such as those initiated by citizens through calls for service and commission of felony or misdemeanor, we compute the officer discretionary index (ODI) as follows:

$$ODI = \frac{\text{Officer Initiated Stops of B/H/W}}{\text{All Officer Initiated Stops}} - \frac{\text{Citizen Initiated Stops of B/H/W}}{\text{All Citizen Initiated Stops}}$$

The ODI compares the proportion of officer discretionary stops of blacks (B), Hispanics (H), and whites (W) with the proportion of citizen-initiated stops of the same racial/ethnic group. If a racial group's proportion among officer discretionary stops differs from that among nondiscretionary stops, there may be indication of racial bias. A positive (or negative) ODI indicates that officers are initiating a higher (or lower) share of stops of that racial or ethnic group than are citizens. A null result (0) indicates that officer discretion judgment is on pace with that of citizens.

For the Austin police data, we examined the reason recorded for making a stop to distinguish between officer-initiated (discretionary) and citizen-initiated (nondiscretionary) stops. Discretionary stops were defined as those of a "suspicious person," while nondiscretionary stops were defined as those stemming from calls for service or violations of Texas penal code, Austin city ordinance, or the Texas water safety act.⁴

Table 1 shows the ODIs calculated for blacks, Hispanics, and whites in Austin, based on vehicle stops resulting in citation or arrest for 2015. As shown, there is no evidence of racial bias in stops of Hispanic drivers. By contrast, among stops resulting in citation or arrest, a higher share of officer-initiated stops of black drivers was present than citizen-initiated stops of black drivers (the difference is higher among stops resulting in arrest). An equivalently lower share of officer-initiated stops of white drivers was present than citizen-initiated stops of white drivers.

TABLE 1

Officer Discretionary Indices, 2015

	Stops Resulting in Citations			Stops Resulting in Arrests		
	% discretionary	% non-discretionary	ODI	% discretionary	% non-discretionary	ODI
Blacks	21	13	0.09	31	19	0.12
Hispanics	41	41	0.01	38	38	0.00
Whites	38	47	-0.09	31	43	-0.12

Note: Discretionary stops are initiated by police officers; nondiscretionary stops are initiated by citizens.

Decision to Search. To understand officers' decision to search a vehicle following a stop, we examined four possibly predictive factors available in the Austin police data, simultaneously in a logistic regression model: driver's race or ethnicity (black, Hispanic, white), driver's gender (male, female), driver's age, and whether the officer indicated he or she knew the driver's race or ethnicity before making the stop.⁵ We also tested the possibility that these factors interacted to predict a decision to search.

For this model, we again focused on vehicle stops resulting in arrest and on searches that were not described as incidental to that arrest. Overall, 23 percent of the arrest stops resulted in a search for which the recorded reason was either “probable cause” (18 percent), “frisk for safety” (4 percent), “contraband in plain view” (0.5 percent), or driver’s “consent” (0.3 percent).

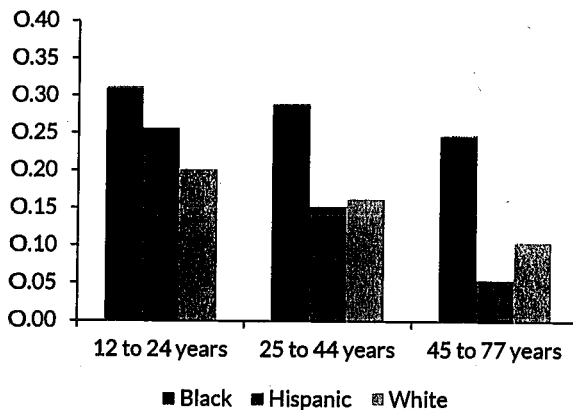
In the regression model, drivers’ race/ethnicity and age interacted to predict Austin police officers’ decisions to conduct searches on stopped vehicles. This finding remained true after adjusting for driver’s gender, whether driver’s race was known before the stop, and an interaction between driver’s gender and age. **Figure 9** graphs the model-estimated probabilities that a vehicle would be searched by drivers’ race/ethnicity and age. Three findings are noteworthy:

- Stopped black drivers of all ages had the highest probabilities of vehicle search.
- Stopped, young Hispanic drivers had the second-highest probability (.26) of vehicle search, at a rate comparable to that of older black drivers (.25).
- Age-related reductions in the probabilities of vehicle search were greater for stopped white and Hispanic drivers than for black drivers.

We also noted (but did not graph) that the estimated probabilities of vehicle search were higher when the driver’s race was known before a stop (.30 compared with .19) and for younger male (.28) than older female drivers (.15). These findings were included as controls in the model.

FIGURE 9

Probability of Vehicle Search by Age and Race or Ethnicity, 2015



Source: Logistic regression model predicting vehicle search, among 7,870 APD vehicle stops ending in arrest in 2015.

Note: Model included drivers’ race, age, gender, whether race was known before the stop, and interactions between race and age and between age and gender.

This model provides insight into the relative importance of different factors in predicting Austin officers’ decision to conduct a vehicle search on stops ending in arrest, but is unable to control for drivers’ differential involvement in illegal activity or exposure to police.

Use-of-Force Incidents

Next, we examined APD's 2014 data on recorded use of officer force against citizens, made public for the PDI and the most comprehensive, publicly available use-of-force dataset. Use-of-force incidents included a range of physical responses to citizens' failure to comply with officers' verbal commands.

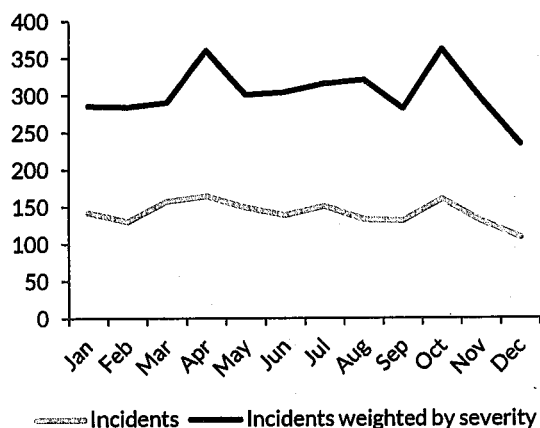
Six general categories of force were distinguishable in the APD data: (1) weaponless use of hands or feet to target pressure points; (2) use of an impact weapon such as a baton; (3) use of a chemical agent such as pepper spray; (4) canine bites; (5) use of a conducted energy device (Taser) or less-lethal impact weapon, such as beanbag/rubber bullets; and (6) lethal firearm use. By far, the largest category of force used was (1), which comprised over two-thirds of force incidents.

Following the NJD analytic framework, we applied a weighted severity scale to these force incident categories so use of a firearm, for example, was weighted more severely than use of a baton. Accordingly, the severity weighting consisted of a 6-point scale aligned with the six categories of force above (e.g., 1 = hands/body, 2 = impact weapon, 3 = pepper spray, 4 = canine, 5 = Taser/less-lethal weapon, 6 = lethal firearm). Higher scores corresponded with more severe levels of force.

Throughout this section, we analyzed both the *counts* of force incidents as well as the *severity* of force incidents. As shown in Figure 10, both the counts and severity of APD force incidents remained fairly constant over time from January to December 2014.⁶ This finding is similar to that for the counts of APD vehicle stops in 2015.

FIGURE 10

Use-of-Force Incidents, 2014



USE OF FORCE BY RACE OR ETHNICITY

Figure 11 and Figure 12 display the counts and severity of force incident rates by citizen's race or ethnicity (per 1,000 citizens). Racial disparities are evident when comparing the racial/ethnic composition of APD's use-of-force incidents to the racial/ethnic composition of the Austin MSA. However, this descriptive analysis of differential exposure to use of force provides no insight on the

complex factors and characteristics that might give rise to such disparities. To explore those factors, more advanced statistical modeling was necessary, as advocated by the NJD analytic framework.

FIGURE 11
Use-of-Force Rates by Citizen Race or Ethnicity, 2014

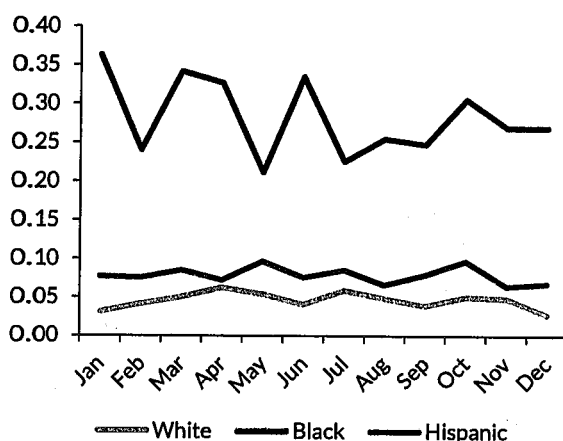
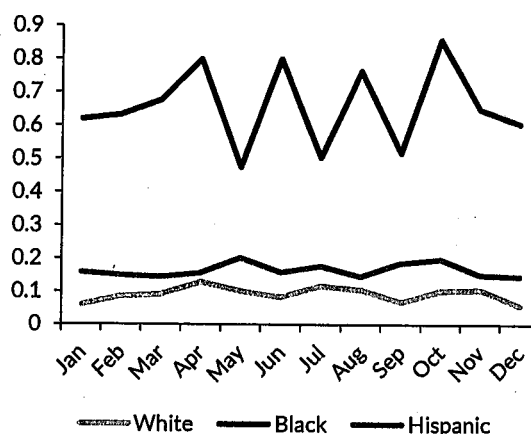


FIGURE 12
Use-of-Force Severity Rates by Citizen Race or Ethnicity, 2014



MODELING USE OF FORCE

To better understand apparent disparities in APD's citywide use of force, we tested the effect of neighborhood-level characteristics on the number of use-of-force incidents that occurred within a census tract, as well as the cumulative severity of force used in those same events.⁷

For these two analyses, we aggregated use-of-force events/severity to the tract level, estimating the independent effects of six neighborhood and demographic characteristics on police use of force: Part I crime rate, median household income, percentage of college-educated residents, homeownership rate, percentage of black residents, and percentage of Hispanic residents.⁸ The first four of these characteristics represent theoretically relevant predictors of police use of force, and so they function as control variables in our models. The percentages of black and Hispanic residents help test whether disparities in police use of force persisted after controlling for those community characteristics.

Both the model of use-of-force incidents and the model of use-of-force severity suggested that Austin's neighborhoods with a higher percentage of black or Hispanic residents experienced a disproportionate amount of police use of force. The percentage of black and percentage of Hispanic residents in a neighborhood were statistically significant positive predictors of police use of force. The percentage of black residents in a neighborhood had a larger effect than percentage of Hispanic residents in both models.

Median household income and crime rate were also impactful and statistically significant predictors of police use of force. The results of the use-of-force incidents model and the use-of-force severity model were largely the same. The statistically significant predictors—median household income, Part I crime rate, percentage of black residents, and percentage of Hispanic residents—were identical

between models. As one would expect, estimated effect sizes were larger for the force severity model because of the multiplicative severity-weighting procedure.

According to the model of use-of-force incidents, a one-point rise in the percentage of black residents increased the expected number of use-of-force incidents by 2.6 percent, holding all other variables constant. The percentage of Hispanic residents had a smaller effect: a one-point rise in the percentage of Hispanic residents increased the expected number of use-of-force incidents by 1.1 percent.

Comparing effect sizes across all independent variables was challenging because the variables were measured in vastly different units. Using standard deviation units, we compared the estimated percentage change in use-of-force incidents uniformly. Increasing the percentage of black residents in a tract by a standard deviation—about 8 percent—led to a 24 percent increase in expected use-of-force incidents. By contrast, a standard deviation increase in the percentage of Hispanic residents—almost 22 percent—led to a 27 percent increase in expected use-of-force incidents.

A standard deviation increase in a tract's Part I crime rate—an upswing of 50 crimes per 1,000 residents—increased the expected number of use-of-force incidents by 92 percent. A standard deviation increase in median household income—a rise of \$28,000—decreased the expected number of use-of-force incidents by 33 percent.

FIGURE 13
Estimated Percentage Change in Use-of-Force Incidents Resulting from a Percentage-Point Increase

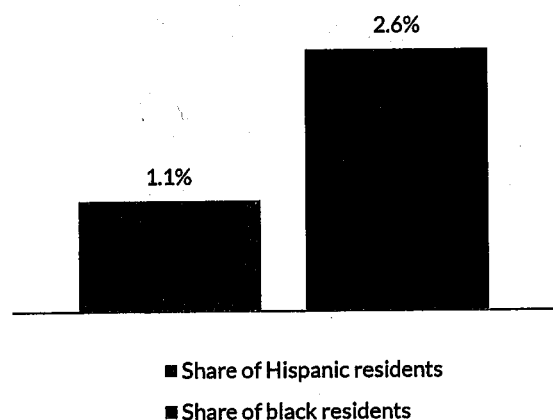
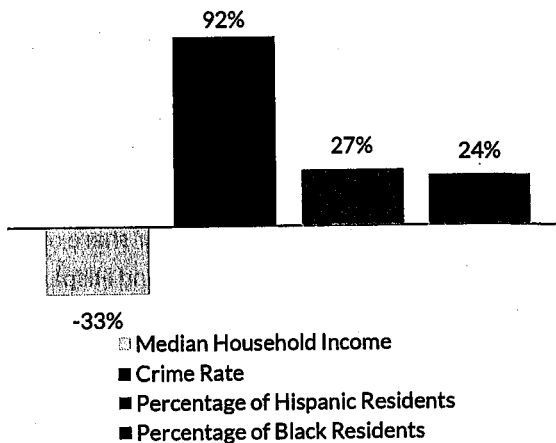


FIGURE 14
Estimated Percentage Change in Use-of-Force Incidents Resulting from a Standard Deviation Increase



Lessons Learned

This report is the first to apply NJD's independent analytic framework to police data made available through the White House's PDI. Although several limitations applied to the findings, as noted throughout, the analyses are encouraging because they represent the start of a more comprehensive and transparent effort to understand—and help correct—the degree of racial and ethnic disparities in policing practices. The information presented is beneficial to both community members and policing executives alike.

As described earlier, the NJD analytic framework identifies three categories of explanation for racial disparities in policing: community level, police level, and relationship level. Given the limited availability of publicly available APD data, and that which is housed on the PDI portal, our analyses are only able to examine community-level explanations. Specifically, this brief analyzes racial disparities in APD police vehicle stops and use of force. The results are mixed.

Analyses of vehicle stop data reveal three important findings.

First, APD searches appear to be highly effective. Searches left to officer discretion (that is, not incidental to arrest) returned contraband roughly 48 percent of the time. While this result may stem in part from APD's unusually stringent policy on consent searches, which require probable cause, it also may be the result of missing data. Given that APD does not publish data on all vehicle stops, an unknown number of vehicle stops and searches did not result in arrest. *To address this omission, APD Chief Acevedo has instructed the department to collect and publish data on both pedestrian and vehicle stops that do not result in citation or arrest by January 2017.*⁹ Presumably fewer of those searches end in arrest given the lack of contraband found. Still, the relatively high hit rate should be a goal of law enforcement, and APD's available data suggest reasons for optimism.

Second, there are racial disparities in the decision to stop and search a suspect. Both our models of decisionmaking around searches, the officer discretionary index and the probability of vehicle search model, reveal disparities by race. The ODI revealed that, for vehicle stops ending in citation or arrest, stopped black motorists made up a higher share of officer-discretionary stops than of stops mandated by citizen complaints or by statutes requiring officers to stop a citizen. Similarly, the ODI revealed that stopped white motorists made up a lower share of officer-discretionary stops. Finally, a model of the decision to search revealed that blacks and Hispanics, once stopped, were more likely to be searched than would be indicated by their representation among those stopped. These findings, however, are qualified by our final finding.

Third, an analysis of racial disparities in hit rates revealed no reliable differences between blacks, whites, and Hispanics. While previous research demonstrates that this is not proof of the absence of bias,¹⁰ it is a positive indicator. Moreover, these findings suggest that racially disparate rates of vehicle stops may in fact be driven by differential rates of offending.

The takeaway from these findings is that community-level explanations appear to account for a sizable amount in observed racial disparities. We encourage the APD to continue monitoring these

issues and to collect data on all its vehicle stops to assess the equity of officer behavior even more accurately.

By contrast, analyses of use-of-force data revealed a more consistent picture of disparity. Even when controlling for neighborhood levels of crime, education, homeownership, income, youth, and unemployment, **racial disparities in both use and severity of force remained.** In other words, community-level explanations of use of force were Not in PDI to explain observed racial disparities in use of force. While crime, poverty, and other factors contributed to these disparities, controlling for these factors did not eliminate disproportionate use of force in communities with higher percentages of Hispanics and blacks.

Still, these discrepancies are not direct evidence of racial prejudice. Rather, they suggest that police-level and/or relationship-level explanations of use-of-force incidents are also implicated. In other words, we advise APD to focus on police-level and relationship-level concerns to reduce racially disparate use of force.

Common police-directed interventions to minimize racially disparate policing include trainings, particularly ones on how to identify and disarm unintended forms of bias (e.g., identity traps and/or implicit bias), policy reviews conducted by external auditors, and collaborative policy reviews with communities. Relationship-directed interventions highlight principles of procedural justice, particularly issues of community voice and police transparency.

Importantly, the APD has recently attempted to promote transparency by instituting a policy governing the use of body-worn cameras. That someone may be terminated immediately if his or her camera is not activated during a deadly force incident (without appropriate justification) is a strong accountability metric. Similarly, new additions to APD's disciplinary matrix on failure to report complaints (with termination recommended after a second infraction) are strong signals of accountability. APD has also stated that effective January 2017 it will include a form on the back of citations that affords citizens an avenue for both complaints and positive feedback following interactions with officers. Finally, APD's leadership on issues of data transparency also signals a willingness to receive criticism and reform in line with the shared values of police and communities—of particular importance given recent concerns about nonreporting in Texas.¹¹

We recommend that APD continue each of these initiatives as well as engage the broader communities of Austin in collaborative efforts to reform and implement policies that reflect their shared values. We also encourage police and community collaboration to design metrics of accountability that are easily understood by the community and leveraged for change both inside the APD and in the Austin metropolitan area.

The science of policing equity demonstrates clearly that collaboration between communities and police is necessary to rebuild trust and reduce the negative consequences that can result from racial disparities in police contacts.¹² We encourage further pursuit of those collaborations and the use of these analyses as benchmarks for both racial equity and progress toward that goal.

Notes

1. See Tom R. Tyler, *Why People Obey the Law* (Princeton, NJ: Princeton University Press, 2006).
2. See Nicola Persico and Petra Todd, "Generalising the Hit Rates Test for Racial Bias in Law Enforcement, with an Application to Vehicle Searches in Wichita," *Economic Journal* 116, no. 515 (2006): F351–67.
3. Persico and Todd, "Generalising the Hit Rates Test."
4. Austin has a three-square-mile lake within the city limits.
5. Although officers' recording of whether a driver's race was known before a vehicle stop was missing for 13 percent of cases, including the variable did not alter the substantive effects of other factors in the model, and it was a significant predictor of vehicle search, so it was retained. Regarding the trustworthiness of the variable's values, we note that officers' were half as likely to indicate race was known (7 percent versus 15 percent) during nighttime (9:00 p.m.–2:00 a.m.) vehicle stops as during other hours of the day, and APD policies specified strict guidelines and consequences for failure to record accurate information for this variable.
6. Use-of-force incidents are coded at the citizen level, meaning that an event consisting of two officers using force against one citizen, for example, is counted as a single use-of-force incident. Conversely, an event that consists of one officer using force on two citizens would be counted as two use-of-force incidents.
7. Use-of-force incidents were weighted using the same schema as used previously.
8. Those characteristics are taken from the 2010–14 American Community Survey five-year estimates.
9. Chase Hoffberger, "APD to Collect More Data," *Austin Chronicle*, April 8, 2016, <http://www.austinchronicle.com/news/2016-04-08/apd-to-collect-more-data/>.
10. Kate Antonovics and Brian G. Knight, "A New Look at Racial Profiling: Evidence from the Boston Police Department," *Review of Economics and Statistics* 91, no. 1 (2009): 163–77.
11. Lise Olsen, "In Texas and California, Policy Fail to Report Use-of-Force Fatalities from 2005–2015," *Houston Chronicle*, October 9, 2016, <http://www.houstonchronicle.com/news/houston-texas/houston/article/In-Texas-and-California-police-fail-to-report-9958631.php>.
12. Tyler, *Why People Obey the Law*.

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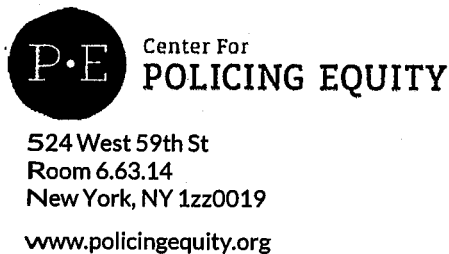
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Created in 2008 by a collaborative effort of Dr. Phillip Atiba Goff and then-Denver Police Department Commander Dr. Tracie L. Keese, the Center for Policing Equity is a research and action think tank that works collaboratively with law enforcement, communities, and political stakeholders to identify ways to strengthen relationships with the communities they serve. Using evidence-based approaches to social justice, we use data to create levers for social, cultural, and policy change.

The Center for Policing Equity is also the home of the National Justice Database, a National Science Foundation effort to standardize national-level data on police behavior. Principal investigators on the National Justice Database are Phillip Atiba Goff, Jack Glaser, Amanda Geller, and Steven Raphael.



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