Police Review Commission (PRC)

POLICE REVIEW COMMISSION
REGULAR MEETING
AGENDA

Wednesday, May 8, 2019
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 April 24, 2019

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, other items.

8. **SUBCOMMITTEE REPORTS (discussion & action)**

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

   a. Lexipol Policies Subcommittee

   b. MOU Compendium Subcommittee

   c. Standard of Proof Subcommittee

9. **OLD BUSINESS (discussion & action)**

   a. Consider revising the charge of the Lexipol Subcommittee
   From: Commissioner Perezvelez
   (See materials on p. 17 of April 24, 2019 packet)

   b. Lexipol Policies for review and approval
   From: Lexipol Subcommittee

Lexipol #	G.O.	Title
208	R-18	Departmental Forms
317	E-11	Public Alerts

   (See materials on pp. 21 – 34 of April 24, 2019 packet.)

   c. Whether to have a table at the Berkeley Juneteenth Festival on Sunday, June 16, 2019.
   From: PRC Officer
   (See materials on p. 35 of April 24, 2019 packet.)

10. **NEW BUSINESS (discussion & action)**

   a. Consider recommending a policy regarding asking motorists in traffic violation stops if they are on parole or probation, and conducting subsequent searches.
   From: Commissioner Calavita

   b. Consider recommending to the City Council that it endorse Senate Bill 233, prohibiting the arrest of a person for certain sex crimes if that person is reporting sexual assault, human trafficking, or other violent crimes.
   From: Commissioner Ramsey

   c. Review BPD's Referral Response: Update on Various Referrals and Recommendations Regarding Stop Data Collection, Data Analysis and Community Engagement (On Council agenda April 30, 2019; referred to Council Public Safety Committee.)

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.)

13. **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 981-6418 (V) or 981-6347 (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
May 8, 2019

MINUTES

AGENDA-RELATED

COMMUNICATION(S)

Police Review Commission (PRC)

DRAFT

POLICE REVIEW COMMISSION
REGULAR MEETING
MINUTES
(draft)

Wednesday, April 24, 2019
7:00 P.M.

South Berkeley Senior Center
2939 Ellis Street, Berkeley

1. **CALL TO ORDER & ROLL CALL BY CHAIR PEREZVELEZ AT 7:05 P.M.**

Present:	Commissioner George Perezvelez (Chair) Commissioner Gwen Allamby (Vice-Chair) Commissioner Elisa Mikiten Commissioner Andrea Prichett Commissioner Terry Roberts Commissioner Mary Kay Lacey (*temporary*)
Absent:	Commissioners Kitty Calavita, Sahana Matthews, Ismail Ramsey
PRC Staff:	Katherine J. Lee, PRC Officer
BPD Staff:	Chief Andrew Greenwood, Capt. Rico Rolleri (left 9:15), Lt. Dave Lindenau, Sgt. Cesar Melero, Sgt. Byron White (left 8:35), Ofc. Chris Waite (left 9:15)

2. **APPROVAL OF AGENDA**

Motion to approve the agenda with one change, to hear Item #11.a. after Item #9.
Moved/Second (Mikiten/Allamby) **Motion Carried**
Ayes: Allamby, Mikiten, Perezvelez, Prichett, Roberts, and Lacey.
Noes: None Abstain: None Absent: Calavita, Matthews, Ramsey

3. **PUBLIC COMMENT**

There were 6 speakers.

4. **APPROVAL OF MINUTES**

Motion to approve Regular Meeting Minutes of April 10, 2019

Moved/Second (Allamby/Mikiten) **Motion Carried**
Ayes: Allamby, Mikiten, Perezvelez, Roberts, and Lacey.
Noes: None Abstain: Prichett Absent: Calavita, Matthews, Ramsey

5. CHAIR'S REPORT

A certificate of appreciation was presented to former commissioner Ari Yampolsky.

6. PRC OFFICER'S REPORT

-- No new complaints filed since the last meeting, except for one that was rejected as filed by a witness, not an aggrieved party. Caloca appeal has been filed in the BOI heard in March.

-- NACOLE Regional forum on May 3: Agenda is in packet; additions since then are facilitated discussion to be led by Petra DeJesus of SF Police Commission, and closing remarks by our George Perezvelez. At 125 registrants; expect at least 150. Planning committee excited about attendees from all over state and beyond, and from established oversight groups and areas where community interested in forming oversight.

-- Reminder to Commissioners who haven't done a ride-along to do one. Contact Chief Greenwood or Capt. Dave Reece to arrange.

-- PRC Officer will be on vacation during next meeting, May 8; Byron Norris will be here.

7. CHIEF OF POLICE'S REPORT

Chief Greenwood reported:

-- Looking forward to NACOLE forum.

-- Currently at 162 sworn. Epic Recruiting coming in early May to shoot video for recruitment.

8. SUBCOMMITTEE REPORTS (discussion & action)

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

a. Lexipol Policies Subcommittee – Next meeting possibly May 1 at 5:00 p.m.

b. MOU Compendium Subcommittee – Chief said he would respond to Subcommittee's questions late this week or early next week.

c. Standard of Proof Subcommittee – Meeting to be scheduled.

9. PRESENTATION ON CITY REPONSE TO MENTAL HEALTH EMERGENCIES

Presentation by Steve Grolnic-McClurg and Tenli Yavneh of the City's Mental Health Division, Ofc. Chris Waite of the BPD, and boona cheema, Chair of the Mental

Health Commission. During and after the presentation, the presenters answered questions from the Commission.

10. **OLD BUSINESS (discussion & action)**

    a. Consider revising the charge of the Lexipol Subcommittee
    (Item continued to the next meeting.)

11. **NEW BUSINESS (discussion & action)**

    a. Consider next steps in proceeding with an evaluation of the Police Department's response to mental health emergencies, and assessment of alternatives, which may include: 1) additional presentations from individuals and groups involved in or affected by current response protocols (as a possible joint hearing with other commissions); 2) presentations on alternative models of service delivery; 3) establishment of a task force or subcommittee to produce recommendations for alternative models of responding to mental health emergencies.
    (Heard following Item #9.)

    Motion to close the item in its current form.
    Moved/Second (Mikiten/Allamby) **Motion Carried**
    Ayes: Allamby, Mikiten, Perezvelez, Roberts, and Lacey.
    Noes: Prichett Abstain: None Absent: Calavita, Matthews, Ramsey

    b. Lexipol Policies for review and approval

Lexipol #	G.O.	Title
208	R-18	Departmental Forms
317	E-11	Public Alerts

    (Item continued to the next meeting.)

    c. Whether to have a table at the Berkeley Juneteenth Festival on Sunday, June 16, 2019.
    (Heard following Item #11.d.)
    (Discussed; to be continued at the next meeting.)

    d. Selection of Commissioner to serve on City of Berkeley Vision Zero Advisory Committee.
    (Heard following Item #11.a.)

    By general consent, Commissioner Gwen Allamby was appointed to this Committee.

12. **ANNOUNCEMENTS, ATTACHMENTS & COMMUNICATIONS**

    Attached

13. PUBLIC COMMENT

There were 3 speakers.

Closed Session

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

14. RECOMMENDATION FOR ADMINISTRATIVE CLOSURE IN CASE #2450 FOR FAILURE TO COOPERATE

Motion to approve Complaint #2450 for administrative closure for failure to cooperate.
Moved/Second (Perezvelez/Allamby) **Motion Carried**
Ayes: Allamby, Perezvelez, Prichett, Roberts, and Lacey.
Noes: Mikiten Abstain: None Absent: Calavita, Matthews, Ramsey

End of Closed Session

15. ANNOUNCEMENT OF CLOSED SESSION ACTION

The above vote to administratively close the complaint was announced.

16. ADJOURNMENT

By general consent, the meeting was adjourned at 10:24 p.m.

Highlighted text beginning p. 6 by Comm. Calavita

Samson v. California, 547 US 843 - Supreme Court 2006

547 U.S. 843 (2006)

SAMSON
v.
CALIFORNIA

No. 04-9728.

Supreme Court of United States.

Argued February 22, 2006.
Decided June 19, 2006.

[547 U.S. 845] *Robert A. Long* argued the cause for petitioner. With him on the briefs was *Martin Kassman.*

Ronald E. Niver, Deputy Attorney General of California, argued the cause for respondent. With him on the brief were *Bill Lockyer,* Attorney General, *Robert R. Anderson,* Chief Assistant Attorney General, *Manuel M. Medeiros,* State Solicitor General, *Donald E. De Nicola,* Deputy Solicitor General, *Gerald A. Engler,* Senior Assistant Attorney General, *Martin S. Kaye,* Supervising Deputy Attorney General, and *Doris A. Calandra,* Deputy Attorney General.

Jonathan L. Marcus argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Clement, Assistant Attorney General Fisher, Deputy Solicitor General Dreeben,* and *Deborah Watson.*[*]

[547 U.S. 846] JUSTICE THOMAS delivered the opinion of the Court.

California law provides that every prisoner eligible for release on state parole "shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause." Cal. Penal Code Ann. § 3067(a) (West 2000). We granted certiorari to decide whether a suspicionless search, conducted under the authority of this statute, violates the Constitution. We hold that it does not.

I

In September 2002, petitioner Donald Curtis Samson was on state parole in California, following a conviction for being a felon in possession of a firearm. On September 6, 2002, Officer Alex Rohleder of the San Bruno Police Department observed petitioner walking down a street with a woman and a child. Based on a prior contact with petitioner, Officer Rohleder was aware that petitioner was on parole and believed that he was facing an at-large warrant. Accordingly, Officer Rohleder stopped petitioner and asked him whether he had an outstanding parole warrant. Petitioner responded that there was no outstanding warrant and that he "was in good standing with his parole agent." Brief for Petitioner 4. Officer Rohleder confirmed, by radio dispatch, that petitioner was on parole and that he did not have an outstanding warrant. Nevertheless, pursuant to Cal. Penal Code Ann. § 3067(a) (West 2000) and based solely on petitioner's 847*847 status as a parolee, Officer Rohleder searched petitioner. During the search, Officer Rohleder found a cigarette box in petitioner's left breast pocket. Inside the box he found a plastic baggie containing methamphetamine.

The State charged petitioner with possession of methamphetamine pursuant to Cal. Health & Safety Code Ann. § 11377(a) (West 1991). The trial court denied petitioner's motion to suppress the methamphetamine evidence, finding that Cal. Penal Code Ann. § 3067(a) (West 2000) authorized the search and that the search was not "arbitrary or capricious." App. 62-63 (Proceedings on Motion to Supress). A jury convicted petitioner of the possession charge, and the trial court sentenced him to seven years' imprisonment.

The California Court of Appeal affirmed. Relying on *People* v. *Reyes*, 19 Cal. 4th 743, 968 P. 2d 445 (1998), the court held that suspicionless searches of parolees are lawful under California law; that "'[s]uch a search is reasonable within the meaning of the Fourth Amendment as long as it is not arbitrary, capricious or harassing'"; and that the search in this case was not arbitrary, capricious, or harassing. No. A102394 (Ct. App. Cal., 1st App. Dist., Oct. 14, 2004), App. 12-14.

We granted certiorari, 545 U. S. 1165 (2005), to answer a variation of the question this Court left open in *United States* v. *Knights*, 534 U. S. 112, 120, n. 6 (2001)—whether a condition of release can so diminish or eliminate a released prisoner's reasonable expectation of privacy that a suspicionless search by a law enforcement officer would not offend the Fourth Amendment.[1] Answering that question in the affirmative today, we affirm the judgment of the California Court of Appeal.

848*848 II

"[U]nder our general Fourth Amendment approach" we "examin[e] the totality of the circumstances" to determine whether a search is reasonable within the meaning of the Fourth Amendment. *Id.*, at 118 (internal quotation marks omitted). Whether a search is reasonable "is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the

degree to which it is needed for the promotion of legitimate governmental interests." *Id.*, at 118-119 (internal quotation marks omitted).

We recently applied this approach in *United States* v. *Knights*. In that case, California law required Knights, as a probationer, to "'[s]ubmit his . . . person, property, place of residence, vehicle, personal effects, to search at anytime, with or without a search warrant, warrant of arrest or reasonable cause by any probation officer or law enforcement officer.'" *Id.*, at 114 (brackets in original). Several days after Knights had been placed on probation, police suspected that he had been involved in several incidents of arson and vandalism. Based upon that suspicion and pursuant to the search condition of his probation, a police officer conducted a warrantless search of Knights' apartment and found arson and drug paraphernalia. *Id.*, at 115-116.

We concluded that the search of Knights' apartment was reasonable. In evaluating the degree of intrusion into Knights' privacy, we found Knights' probationary status "salient," *id.*, at 118, observing that "[p]robation is 'one point . . . on a continuum of possible punishments ranging from solitary confinement in a maximum-security facility to a few hours of mandatory community service,'" *id.*, at 119 (quoting *Griffin* v. *Wisconsin*, 483 U. S. 868, 874 (1987)). Cf. *Hudson* v. *Palmer*, 468 U. S. 517, 530 (1984) (holding that prisoners have no reasonable expectation of privacy). We further observed that, by virtue of their status alone, probationers "'do not enjoy "the absolute liberty to which every [849*849] citizen is entitled,"'" *Knights, supra*, at 119 (quoting *Griffin, supra*, at 874, in turn quoting *Morrissey* v. *Brewer*, 408 U. S. 471, 480 (1972)), justifying the "impos[ition] [of] reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens," *Knights, supra*, at 119. We also considered the facts that Knights' probation order clearly set out the probation search condition, and that Knights was clearly informed of the condition. See 534 U. S., at 119. We concluded that under these circumstances, Knights' expectation of privacy was significantly diminished. See *id.*, at 119-120.

We also concluded that probation searches, such as the search of Knights' apartment, are necessary to the promotion of legitimate governmental interests. Noting the State's dual interest in integrating probationers back into the community and combating recidivism, see *id.*, at 120-121, we credited the "'assumption'" that, by virtue of his status, a probationer "'is more likely than the ordinary citizen to violate the law,'" *id.*, at 120 (quoting *Griffin, supra*, at 880). We further found that "probationers have even more of an incentive to conceal their criminal activities and quickly dispose of incriminating evidence than the ordinary criminal because probationers are aware that they may be subject to supervision and face revocation of probation, and possible incarceration, in proceedings in which the trial rights of a jury and proof beyond a reasonable doubt, among other things, do not apply." *Knights*, 534 U. S., at 120. We explained that the State did not have to ignore the reality of recidivism or suppress its interests in "protecting potential victims of criminal enterprise" for fear of running afoul of the Fourth Amendment. *Id.*, at 121.

Balancing these interests, we held that "[w]hen an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy [850*850] interests is reasonable." *Ibid.* Because the search at issue in *Knights* was predicated on both the probation search condition and reasonable suspicion, we did not reach the question whether the search would have been reasonable under the Fourth Amendment had it been solely predicated upon the condition of probation. *Id.*, at 120, n. 6. Our attention is directed to that question today, albeit in the context of a parolee search.

III

As we noted in *Knights*, parolees are on the "continuum" of state-imposed punishments. *Id.*, at 119 (internal quotation marks omitted). On this continuum, parolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation is to imprisonment. As this Court has pointed out, "parole is an established variation on imprisonment of convicted criminals. . . . The essence of parole is release from prison, before the completion of sentence, on the condition that the prisoner abide by certain rules during the balance of the sentence." *Morrissey, supra*, at 477. "In most cases, the State is willing to extend parole only because it is able to condition it upon compliance with certain requirements." *Pennsylvania Bd. of Probation and Parole* v. *Scott*, 524 U. S. 357, 365 (1998). See also *United States* v. *Reyes*, 283 F. 3d 446, 461 (CA2 2002) ("[F]ederal supervised release, . . . in contrast to probation, is meted out in addition to, not in lieu of, incarceration" (internal quotation marks omitted)); *United States* v. *Cardona*, 903 F. 2d 60, 63 (CA1 1990) ("[O]n the Court's continuum of possible punishments, parole is the stronger medicine; ergo, parolees enjoy even less of the average citizen's absolute liberty than do probationers" (citations and internal quotation marks omitted)).[2]

851*851 California's system of parole is consistent with these observations: A California inmate may serve his parole period either in physical custody, or elect to complete his sentence out of physical custody and subject to certain conditions. Cal. Penal Code Ann. § 3060.5 (West 2000). Under the latter option, an inmate-turned-parolee remains in the legal custody of the California Department of Corrections through the remainder of his term, § 3056, and must comply with all of the terms and conditions of parole, including mandatory drug tests, restrictions on association with felons or gang members, and mandatory meetings with parole officers, Cal. Code Regs., tit. 15, § 2512 (2005); Cal. Penal Code Ann. § 3067 (West 2000). See also *Morrissey, supra*, at 478 (discussing other permissible terms and conditions of parole). General conditions of parole also require a parolee to report to his assigned parole officer immediately upon release, inform the parole officer within 72 hours of any change in employment status, request permission to travel a distance of more than 50 miles from the parolee's home, and refrain from criminal conduct and possession of firearms, specified weapons, or knives unrelated to employment. Cal. Code Regs., tit. 15, 852*852 § 2512. Parolees may also be subject to special conditions, including psychiatric treatment programs, mandatory abstinence from alcohol, residence approval, and "[a]ny other condition deemed necessary by the Board [of Parole Hearings] or the Department [of Corrections and Rehabilitation] due to unusual circumstances." § 2513. The extent and reach of these conditions clearly demonstrate that parolees like petitioner have severely diminished expectations of privacy by virtue of their status alone.

Additionally, as we found "salient" in *Knights* with respect to the probation search condition, the parole search condition under California law—requiring inmates who opt for parole to submit to suspicionless searches by a parole officer or other peace officer "at any time," Cal. Penal Code Ann. § 3067(a) (West 2000)—was "clearly expressed" to petitioner. *Knights*, 534 U. S., at 119. He signed an order submitting to the condition and thus was "unambiguously" aware of it. *Ibid.* In *Knights*, we found that acceptance of a clear and unambiguous search condition "significantly diminished Knights' reasonable expectation of privacy." *Id.*, at 120. Examining the totality of the circumstances pertaining to petitioner's status as a parolee, "an established variation on imprisonment," *Morrissey*, 408 U. S., at 477, including the plain terms of the parole search condition, we conclude that petitioner did not have an expectation of privacy that society would recognize as legitimate.[3]

853*853 The State's interests, by contrast, are substantial. This Court has repeatedly acknowledged that a State has an "'overwhelming interest'" in supervising parolees because "parolees. . . are more likely to commit future criminal offenses." *Pennsylvania Bd. of Probation and Parole*, 524 U. S., at 365 (explaining that the interest in combating recidivism "is the very premise behind the system of close parole supervision"). Similarly, this Court has repeatedly acknowledged that a State's interests in reducing recidivism and thereby promoting reintegration and positive citizenship among probationers and parolees warrant privacy intrusions that would not otherwise be tolerated under the Fourth Amendment. See *Griffin*, 483 U. S., at 879; *Knights, supra*, at 121.

The empirical evidence presented in this case clearly demonstrates the significance of these interests to the State of California. As of November 30, 2005, California had over 130,000 released parolees. California's parolee population has a 68- to 70-percent recidivism rate. See California Attorney General, Crime in California 37 (Apr. 2001) (explaining that 68 percent of adult parolees are returned to prison, 55 percent for a parole violation, 13 percent for the commission of a new felony offense); J. Petersilia, Challenges of Prisoner Reentry and Parole in California, 12 California Policy Research Center Brief, p. 2 (June 2000), available at http://www.ucop.edu/cprc/parole.pdf 854*854 (as visited June 15, 2006, and available in Clerk of Court's case file) ("70% of the state's paroled felons reoffend within 18 months—the highest recidivism rate in the nation"). This Court has acknowledged the grave safety concerns that attend recidivism. See *Ewing* v. *California*, 538 U. S. 11, 26 (2003) (plurality opinion) ("Recidivism is a serious public safety concern in California and throughout the Nation").

As we made clear in *Knights*, the Fourth Amendment does not render the States powerless to address these concerns *effectively*. See 534 U. S., at 121. Contrary to petitioner's contention, California's ability to conduct suspicionless searches of parolees serves its interest in reducing recidivism, in a manner that aids, rather than hinders, the reintegration of parolees into productive society.

In California, an eligible inmate serving a determinate sentence may elect parole when the actual days he has served plus statutory time credits equal the term imposed by the trial court, Cal. Penal Code Ann. §§ 2931, 2933, 3000(b)(1) (West 2000), irrespective of whether the inmate is capable of integrating himself back into productive society. As the recidivism rate demonstrates, most parolees are ill prepared to handle the pressures of reintegration. Thus, most parolees require intense supervision. The California Legislature has concluded that, given the number of inmates the State paroles and its high recidivism rate, a requirement that searches be based on individualized suspicion would undermine the State's ability to effectively supervise parolees and protect the public from criminal acts by reoffenders. This conclusion makes eminent sense. Imposing a reasonable suspicion requirement, as urged by petitioner, would give parolees greater opportunity to anticipate searches and conceal criminality. See *Knights, supra*, at 120; *Griffin*, 483 U. S., at 879. This Court concluded that the incentive-to-conceal concern justified an "intensive" system for supervising probationers in *Griffin, id.*, at 875. That concern applies 855*855 with even greater force to a system of supervising parolees. See *United States* v. *Reyes*, 283 F. 3d, at 461 (observing that the *Griffin* rationale "appl[ies] *a fortiori*" to "federal supervised release, which, in contrast to probation, is 'meted out in addition to, not in lieu of, incarceration'"); *United States* v. *Crawford*, 372 F. 3d 1048, 1077 (CA9 2004) (Kleinfeld, J., concurring) (explaining that parolees, in contrast to probationers, "have been sentenced to prison for felonies and released before the end of their prison terms" and are "deemed to have acted more harmfully than anyone except those felons not released on parole"); *Hudson*, 468 U. S., at 529 (observing that it would be "naive" to institute a system of "'planned random searches'" as that would allow prisoners to "anticipate" searches, thus defeating the purpose of random searches).

Petitioner observes that the majority of States and the Federal Government have been able to further similar interests in reducing recidivism and promoting reintegration, despite having systems that permit parolee searches based upon some level of suspicion. Thus, petitioner contends, California's system is constitutionally defective by comparison. Petitioner's reliance on the practices of jurisdictions other than California, however, is misplaced. That some States and the Federal Government require a level of individualized suspicion is of little relevance to our determination whether California's supervisory system is drawn to meet its needs and is reasonable, taking into account a parolee's substantially diminished expectation of privacy.[4]

856*856 Nor is there merit to the argument that California's parole search law permits "a blanket grant of discretion untethered by any procedural safeguards," *post,* at 857 (Stevens, J., dissenting). The concern that California's suspicionless search system gives officers unbridled discretion to conduct searches, thereby inflicting dignitary harms that arouse strong resentment in parolees and undermine their ability to reintegrate into productive society, is belied by California's prohibition on "arbitrary, capricious or harassing" searches. See *Reyes,* 19 Cal. 4th, at 752, 753-754, 968 P. 2d, at 450, 451; *People* v. *Bravo,* 43 Cal. 3d 600, 610, 738 P. 2d 336, 342 (1987) (probation); see also Cal. Penal Code Ann. § 3067(d) (West 2000) ("It is not the intent of the Legislature to authorize law enforcement officers to conduct searches for the sole purpose of harassment").[5] The dissent's claim that parolees under California law are subject to capricious searches conducted at the unchecked "whim" of law enforcement officers, *post,* at 858-859, 860, ignores this prohibition. Likewise, petitioner's concern that California's suspicionless search law frustrates reintegration efforts by permitting intrusions into 857*857 the privacy interests of third parties is also unavailing because that concern would arise under a suspicion-based regime as well.

IV

Thus, we conclude that the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee. Accordingly, we affirm the judgment of the California Court of Appeal.

It is so ordered.

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE BREYER join, dissenting.

Our prior cases have consistently assumed that the Fourth Amendment provides some degree of protection for probationers and parolees. The protection is not as robust as that afforded to ordinary citizens; we have held that probationers' lowered expectation of privacy may justify their warrantless search upon reasonable suspicion of wrongdoing, see *United States* v. *Knights,* 534 U. S. 112 (2001). We have also recognized that the supervisory responsibilities of probation officers, who are required to provide "'individualized counseling'" and to monitor their charges' progress, *Griffin* v. *Wisconsin,* 483 U. S. 868, 876-877 (1987), and who are in a unique position to judge "how close a supervision the probationer requires," *id.,* at 876, may give rise to special needs justifying departures from Fourth Amendment strictures. See *ibid.* ("Although a probation officer is not an impartial magistrate, neither is he the police officer who normally conducts searches against the ordinary citizen"). But neither *Knights* nor *Griffin* supports a regime of suspicionless searches, conducted pursuant to a blanket grant of discretion untethered by any procedural safeguards, by law enforcement personnel who have no special interest in the welfare of the parolee or probationer.

What the Court sanctions today is an unprecedented curtailment of liberty. Combining faulty syllogism with circular 858*858 reasoning, the Court concludes that parolees have no more legitimate an expectation of privacy in their persons than do prisoners. However superficially appealing that parity in treatment may seem, it runs roughshod over our precedent. It also rests on an intuition that fares poorly under scrutiny. And once one acknowledges that parolees do have legitimate expectations of privacy beyond those of prisoners, our Fourth Amendment jurisprudence does not permit the conclusion, reached by the Court here for the first time, that a search supported by neither individualized suspicion nor "special needs" is nonetheless "reasonable."

The suspicionless search is the very evil the Fourth Amendment was intended to stamp out. See *Boyd* v. *United States*, 116 U. S. 616, 625-630 (1886); see also, *e. g.*, *Indianapolis* v. *Edmond*, 531 U. S. 32, 37 (2000). The pre-Revolutionary "writs of assistance," which permitted roving searches for contraband, were reviled precisely because they "placed 'the liberty of every man in the hands of every petty officer.'" *Boyd*, 116 U. S., at 625. While individualized suspicion "is not an 'irreducible' component of reasonableness" under the Fourth Amendment, *Edmond*, 531 U. S., at 37 (quoting *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 561 (1976)), the requirement has been dispensed with only when programmatic searches were required to meet a "'special need' . . . divorced from the State's general interest in law enforcement," *Ferguson* v. *Charleston*, 532 U. S. 67, 79 (2001); see *Edmond*, 531 U. S., at 37; see also *Griffin*, 483 U. S., at 873 ("Although we usually require that a search be undertaken only pursuant to a warrant (and thus supported by probable cause, as the Constitution says warrants must be), . . . we have permitted exceptions when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable'").

Not surprisingly, the majority does not seek to justify the search of petitioner on "special needs" grounds. Although the Court has in the past relied on special needs to uphold 859*859 warrantless searches of probationers, *id.*, at 873, 880, it has never gone so far as to hold that a probationer or parolee may be subjected to full search at the whim of any law enforcement officer he happens to encounter, whether or not the officer has reason to suspect him of wrongdoing. *Griffin*, **after all, involved a search *by a probation officer* that was supported by *reasonable suspicion*. The special role of probation officers was critical to the analysis; "we deal with a situation," the Court explained,** "in which there is an ongoing supervisory relationship—and one that is not, or at least not entirely, adversarial—between the object of the search and the decisionmaker." *Id.*, at 879. The State's interest or "special need," as articulated in *Griffin*, was an interest in supervising the wayward probationer's reintegration into society—not, or at least not principally, the general law enforcement goal of detecting crime, see *ante*, at 853.[1]

It is no accident, then, that when we later upheld the search of a probationer *by a law enforcement officer* (again, 860*860 based on reasonable suspicion), we forwent any reliance on the special needs doctrine. See *Knights*, 534 U. S. 112. **Even if the supervisory relationship between a probation officer and her charge may properly be characterized as one giving rise to needs "divorced from the State's general interest in law enforcement," *Ferguson*, 532 U. S., at 79; but see *id.*, at 79, n. 15, the relationship between an ordinary law enforcement officer and a probationer unknown to him may not.** "None of our special needs precedents has sanctioned the routine inclusion of law enforcement, both in the design of the policy and in using arrests, either threatened or real, to implement the system designed for the special needs objectives." *Id.*, at 88 (Kennedy, J., concurring in judgment).

Ignoring just how "closely guarded" is that "category of constitutionally permissible suspicionless searches," *Chandler* v. *Miller*, 520 U. S. 305, 309 (1997), **the Court for the first time upholds an entirely suspicionless search unsupported by any special need.** And it goes further: [In special needs cases we have at least insisted upon programmatic safeguards designed to ensure evenhandedness in application; if individualized suspicion is to be jettisoned, it must be replaced with measures to protect against the state actor's unfettered discretion. See, *e. g.*, *Delaware* v. *Prouse*, 440 U. S. 648, 654-655 (1979) (where a special need "precludes insistence upon `some quantum of individualized suspicion,' other safeguards are generally relied upon to assure that the individual's reasonable expectation of privacy is not `subject to the discretion of the official in the field'" (quoting *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523, 532 (1967); footnote omitted)); *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 882 (1975) ("[T]he **reasonableness requirement of the Fourth Amendment demands something more than the broad and unlimited discretion sought by the Government"). Here, by contrast, there are no policies in place—no "standards, guidelines, or procedures," *Prouse*, 440 U. S., at 650—to rein in officers and furnish a** 861*861 **bulwark against the arbitrary exercise of discretion that is the height of unreasonableness.**

The Court is able to make this unprecedented move only by making another. Coupling the dubious holding of *Hudson* v. *Palmer*, 468 U. S. 517 (1984), with the bald statement that "parolees have fewer expectations of privacy than probationers," *ante*, at 850, the Court two-steps its way through a faulty syllogism and, thus, avoids the application of Fourth Amendment principles altogether. The logic, apparently, is this: Prisoners have no legitimate expectation of privacy; parolees are like prisoners; therefore, parolees have no legitimate expectation of privacy. The conclusion is remarkable not least because we have long embraced its opposite.[2] It also rests on false premises. First, it is simply not true that a parolee's status, vis-à-vis either the State or the Constitution, is tantamount to that of a prisoner or even materially distinct from that of a probationer. See *Morrissey* v. *Brewer*, 408 U. S. 471, 482 (1972) ("Though the State properly subjects [a parolee] to many restrictions not applicable to other citizens, his condition is very different from that of confinement in a prison"). A parolee, like a probationer, is set free in the world subject to restrictions intended to facilitate supervision and guard against antisocial behavior. As with probation, "the State is willing to extend parole only because it is able to condition it upon compliance with certain requirements." *Pennsylvania Bd. of Probation and Parole* v. *Scott*, 524 U. S. 357, 365 (1998). Certainly, parole differs from probation insofar as parole is "`meted out in addition 862*862 to, not in lieu of, incarceration.'" *Ante*, at 850 (quoting *United States* v. *Reyes*, 283 F. 3d 446, 461 (CA2 2002)). And, certainly, parolees typically will have committed more serious crimes—ones warranting a prior term of imprisonment—than probationers. The latter distinction, perhaps, would support the conclusion that a State has a stronger interest in supervising parolees than it does in supervising probationers. But see *United States* v. *Williams*, 417 F. 3d 373, 376, n. 1 (CA3 2005) ("`[T]here is no constitutional difference between probation and parole for purposes of the [F]ourth [A]mendment'"). But why either distinction should result in refusal to acknowledge as legitimate, when harbored by parolees, the same expectation of privacy that probationers reasonably may harbor is beyond fathom.

In any event, the notion that a parolee legitimately expects only so much privacy as a prisoner is utterly without foundation. *Hudson* v. *Palmer* does stand for the proposition that "[a] right of privacy in traditional Fourth Amendment terms" is denied individuals who are incarcerated. 468 U. S., at 527. But this is because it "is necessary, as a practical matter, to accommodate a myriad of `institutional needs and objectives' of prison facilities, . . . chief among which is internal security." *Id.*, at 524; see *id.*, at 538 (O'Connor, J., concurring) ("I agree that the government's compelling

interest in prison safety, together with the necessarily ad hoc judgments required of prison officials, make prison cell searches and seizures appropriate for categorical treatment" [3]); see also *Treasury Employees* v. *Von Raab*, 489 U. S. 656, 680 (1989) (Scalia, J., dissenting). These "institutional needs"—safety of inmates and guards, "internal order," and sanitation, *Hudson*, 468 U. S., at 527-528—manifestly 863*863 do not apply to parolees. As discussed above and in *Griffin*, *other* state interests may warrant certain intrusions into a parolee's privacy, but *Hudson*'s rationale cannot be mapped blindly onto the situation with which we are presented in this case.

Nor is it enough, in deciding whether someone's expectation of privacy is "legitimate," to rely on the existence of the offending condition or the individual's notice thereof. Cf. *ante*, at 852. The Court's reasoning in this respect is entirely circular. **The mere fact that a particular State refuses to acknowledge a parolee's privacy interest cannot mean that a parolee in that State has no expectation of privacy that society is willing to recognize as legitimate—especially when the measure that invades privacy is both the *subject* of the Fourth Amendment challenge and a clear outlier.** With only one or two arguable exceptions, neither the Federal Government nor any other State subjects parolees to searches of the kind to which petitioner was subjected. And the fact of notice hardly cures the circularity; the loss of a subjective expectation of privacy would play "no meaningful role" in analyzing the legitimacy of expectations, for example, "if the Government were suddenly to announce on nationwide television that all homes henceforth would be subject to warrantless entry." *Smith* v. *Maryland*, 442 U. S. 735, 740-741, n. 5 (1979).[4]

864*864 Threaded through the Court's reasoning is the suggestion that deprivation of Fourth Amendment rights is part and parcel of any convict's punishment. See *ante*, at 848-850.[5] If a person may be subject to random and suspicionless searches in prison, the Court seems to assume, then he cannot complain when he is subject to the same invasion outside of prison, so long as the State still *can* imprison him. Punishment, though, is not the basis on which *Hudson* was decided. (Indeed, it is settled that a prison inmate "'retains those [constitutional] rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.'" *Turner* v. *Safley*, 482 U. S. 78, 95 (1987).) Nor, to my knowledge, have we ever sanctioned the use of any search as a punitive measure. Instead, the question in every case must be whether the balance of legitimate expectations of privacy, on the one hand, and the State's interests in conducting the relevant search, on the other, justifies dispensing with the warrant and probable-cause requirements that are otherwise dictated by the Fourth Amendment. That balance is not the same in prison as it is out. We held in *Knights*—without recourse to *Hudson*—that the balance favored allowing the State to conduct searches based on reasonable suspicion. Never before have we plunged below that floor absent a demonstration of "special needs."

Had the State imposed as a condition of parole a requirement that petitioner submit to random searches by his parole officer, who is "supposed to have in mind the welfare of the 865*865 [parolee]" and guide the parolee's transition back into society, *Griffin*, 483 U. S., at 876-877, the condition might have been justified either under the special needs doctrine or because at least part of the requisite "reasonable suspicion" is supplied in this context by the individual-specific knowledge gained through the supervisory relationship. See *id.*, at 879 (emphasizing probation office's ability to "assess probabilities in the light of its knowledge of [the probationer's] life, character, and circumstances"). Likewise, this might have been a different case had a court or parole board imposed the condition at issue based on specific knowledge of the individual's criminal history and projected likelihood of reoffending, or if the State had had in place programmatic safeguards to ensure evenhandedness. See *supra*, at 860. Under either of those scenarios, the State would at least have

gone some way toward averting the greatest mischief wrought by officials' unfettered discretion. But the search condition here is imposed on *all* parolees—whatever the nature of their crimes, whatever their likelihood of recidivism, and whatever their supervisory needs—without any programmatic procedural protections.[6]

The Court seems to acknowledge that unreasonable searches "inflic[t] dignitary harms that arouse strong resentment in parolees and undermine their ability to reintegrate into productive society." *Ante,* at 856; see *Terry* v. *Ohio,* 392 U. S. 1, 19, 29 (1968). It is satisfied, however, that the 866*866 **California courts' prohibition against "`arbitrary, capricious or harassing'" searches suffices to avert those harms—which are of course counterproductive to the State's purported aim of rehabilitating former prisoners and reintegrating them into society. See *ante,* at 856 (citing *People* v. *Reyes,* 19 Cal. 4th 743, 968 P. 2d 445 (1998)). I am unpersuaded. The requirement of individualized suspicion, in all its iterations, is the shield the Framers selected to guard against the evils of arbitrary action, caprice, and harassment. To say that those evils may be averted without that shield is, I fear, to pay lipservice to the end while withdrawing the means.[7]**

Respectfully, I dissent.

[*] Briefs of *amici curiae* urging reversal were filed for the American Civil Liberties Union et al. by *Graham A. Boyd, Steven R. Shapiro,* and *Alan Schlosser;* for the California Public Defenders Association et al. by *Michael C. McMahon* and *Kenneth I. Clayman;* for Citizens United for Rehabilitation of Errants by *Robert Weisberg;* and for the National Association of Criminal Defense Lawyers by *Carter G. Phillips, Jeffrey T. Green,* and *Pamela Harris.*

Briefs of *amici curiae* urging affirmance were filed for the State of Pennsylvania et al. by *Thomas W. Corbett, Jr.,* Attorney General of Pennsylvania, *Howard G. Hopkirk,* Senior Deputy Attorney General, and *John G. Knorr III,* Chief Deputy Attorney General, and by the Attorneys General for their respective States as follows: *Mike Beebe* of Arkansas, *John W. Suthers* of Colorado, *Mark J. Bennett* of Hawaii, *Lawrence G. Wasden* of Idaho, *Lisa Madigan* of Illinois, *Gregory D. Stumbo* of Kentucky, *J. Joseph Curran, Jr.,* of Maryland, *Michael A. Cox* of Michigan, *Jim Hood* of Mississippi, *Jeremiah W. (Jay) Nixon* of Missouri, *George J. Chanos* of Nevada, *Wayne Stenehjem* of North Dakota, *Hardy Myers* of Oregon, *Lawrence E. Long* of South Dakota, *Paul G. Summers* of Tennessee, *Greg Abbott* of Texas, *Mark L. Shurtleff* of Utah, *Rob McKenna* of Washington, *Darrell V. McGraw, Jr.,* of West Virginia, and *Patrick J. Crank* of Wyoming; for Americans for Effective Law Enforcement, Inc., et al. by *Wayne W. Schmidt, James P. Manak, Richard Weintraub,* and *Bernard J. Farber;* and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson.*

Briefs of *amici curiae* were filed for Los Angeles County by *Scott Wm. Davenport;* and for Los Angeles County District Attorney Steve Cooley by *Mr. Cooley, pro se, Lael R. Rubin, Brentford J. Ferreira,* and *Phyllis C. Asayama.*

[1] *Knights,* 534 U. S., at 120, n. 6 ("We do not decide whether the probation condition so diminished, or completely eliminated, Knights' reasonable expectation of privacy . . . that a search by a law enforcement officer without any individualized suspicion would have satisfied the reasonableness requirement of the Fourth Amendment").

[2] Contrary to the dissent's contention, nothing in our recognition that parolees are more akin to prisoners than probationers is inconsistent with our precedents. Nor, as the dissent suggests, do we equate parolees with prisoners for the purpose of concluding that parolees, like prisoners, have no Fourth Amendment rights. See *post,* at 861 (opinion of Stevens, J.). That view misperceives our holding. If that were the basis of our holding, then this case would have been resolved solely under *Hudson* v. *Palmer,* 468 U. S. 517 (1984), and there would have been no cause to resort to Fourth Amendment analysis. See *ibid.* (holding traditional Fourth Amendment analysis of the totality of the circumstances inapplicable to the question whether a prisoner had a reasonable expectation of privacy in his prison cell). Nor is our rationale inconsistent with *Morrissey* v. *Brewer,* 408 U. S. 471, 482 (1972). In that case, the Court recognized that restrictions on a parolee's liberty are not unqualified. That statement, even if accepted as a truism, sheds no light on the extent to which a parolee's constitutional rights are indeed limited—and no one argues that a parolee's constitutional rights are not limited. *Morrissey* itself does not cast doubt on today's holding given that the liberty at issue in that case— the Fourteenth Amendment Due Process right to a hearing before revocation of parole—invokes wholly different analysis than the search at issue here.

[3] Because we find that the search at issue here is reasonable under our general Fourth Amendment approach, we need not reach the issue whether "acceptance of the search condition constituted consent in the *Schneckloth* [v. *Bustamonte*, 412 U. S. 218 (1973),] sense of a complete waiver of his Fourth Amendment rights." *United States* v. *Knights*, 534 U. S. 112, 118 (2001). The California Supreme Court has not yet construed Cal. Penal Code Ann. § 3067 (West 2000), the statute which governs parole for crimes committed after 1996, and which imposes the consent requirement. The California Court of Appeal has, and it has concluded that, under § 3067(b), "inmates who are otherwise eligible for parole yet refuse to agree to the mandatory search condition will remain imprisoned. . . until either (1) the inmate agrees to the search condition and is otherwise eligible for parole, or (2) has lost all worktime credits and is eligible for release after having served the balance of his/her sentence." *People* v. *Middleton*, 131 Cal. App. 4th 732, 739-740, 31 Cal. Rptr. 3d 813, 818 (2005). Nonetheless, we decline to rest our holding today on the consent rationale. The California Supreme Court, we note, has not yet had a chance to address the question squarely, and it is far from clear that the State properly raised its consent theory in the courts below.

Nor do we address whether California's parole search condition is justified as a special need under *Griffin* v. *Wisconsin*, 483 U. S. 868 (1987), because our holding under general Fourth Amendment principles renders such an examination unnecessary.

[4] The dissent argues that, "once one acknowledges that parolees do have legitimate expectations of privacy beyond those of prisoners, our Fourth Amendment jurisprudence does not permit the conclusion, reached by the Court here for the first time, that a search supported by neither individualized suspicion nor 'special needs' is nonetheless 'reasonable.'" *Post*, at 858. That simply is not the case. The touchstone of the Fourth Amendment is reasonableness, not individualized suspicion. Thus, while this Court's jurisprudence has often recognized that "to accommodate public and private interests some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure," *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 560 (1976), we have also recognized that the "Fourth Amendment imposes no irreducible requirement of such suspicion," *id.*, at 561. Therefore, although this Court has only sanctioned suspicionless searches in limited circumstances, namely, programmatic and special needs searches, we have never held that these are the only limited circumstances in which searches absent individualized suspicion could be "reasonable" under the Fourth Amendment. In light of California's earnest concerns respecting recidivism, public safety, and reintegration of parolees into productive society, and because the object of the Fourth Amendment is *reasonableness*, our decision today is far from remarkable. Nor, given our prior precedents and caveats, is it "unprecedented." *Post*, at 857.

[5] Under California precedent, we note, an officer would not act reasonably in conducting a suspicionless search absent knowledge that the person stopped for the search is a parolee. See *People* v. *Sanders*, 31 Cal. 4th 318, 331-332, 73 P. 3d 496, 505-506 (2003); Brief for United States as *Amicus Curiae* 20.

[1] As we observed in *Ferguson* v. *Charleston*, 532 U. S. 67 (2001), *Griffin*'s special needs rationale was cast into doubt by our later decision in *Skinner* v. *Railway Labor Executives' Assn.*, 489 U. S. 602 (1989), which reserved the question whether "'routine use in criminal prosecutions of evidence obtained pursuant to the administrative scheme would give rise to an inference of pretext, or otherwise impugn the administrative nature of the . . . program,'" *Ferguson*, 532 U. S., at 79, n. 15 (quoting *Skinner*, 489 U. S., at 621, n. 5). But at least the State in *Griffin* could in good faith contend that its warrantless searches were supported by a special need conceptually distinct from law enforcement goals generally. Indeed, that a State's interest in supervising its parolees and probationers to ensure their smooth reintegration may occasionally diverge from its general law enforcement aims is illustrated by this very case. Petitioner's possession of a small amount of illegal drugs would not have been grounds for revocation of his parole. See Cal. Penal Code Ann. § 3063.1(a) (West Supp. 2006). Presumably, the California Legislature determined that it is unnecessary and perhaps even counterproductive, as a means of furthering the goals of the parole system, to reincarcerate former prisoners for simple possession. The general law enforcement interests the State espouses, by contrast, call for reincarceration.

[2] See *Morrissey* v. *Brewer*, 408 U. S. 471, 482 (1972) ("[T]he liberty of a parolee, although indeterminate, includes many of the core values of unqualified liberty"); *Griffin* v. *Wisconsin*, 483 U. S. 868, 875 (1987) (the "degree of impingement upon [a probationer's] privacy . . . is not unlimited"); see also *Ferguson*, 532 U. S., at 101 (Scalia, J., dissenting) ("I doubt whether Griffin's reasonable expectation of privacy in his home was any less than petitioners' reasonable expectation of privacy in their urine taken").

[3] Particularly in view of Justice O'Connor's concurrence, which emphasized the prison's programmatic interests in conducting suspicionless searches, see *Hudson*, 468 U. S., at 538, *Hudson* is probably best understood as a "special needs" case—not as standing for the blanket proposition that prisoners have no Fourth Amendment rights.

[4] Likewise, the State's argument that a California parolee "consents" to the suspicionless search condition is sophistry. Whether or not a prisoner can choose to remain in prison rather than be released on parole, cf. *ante*, at 852-853, n. 3, he has no "choice" concerning the search condition; he may either remain in prison, where he will be subjected to suspicionless searches, or he may exit prison and still be subject to suspicionless searches. Accordingly, "to speak of consent in this context is to resort to a

'manifest fiction,' for 'the [parolee] who purportedly waives his rights by accepting such a condition has little genuine option to refuse.'" 5 W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 10.10(b), pp. 440-441 (4th ed. 2004).

[5] This is a vestige of the long-discredited "act of grace" theory of parole. Compare *Escoe* v. *Zerbst*, 295 U. S. 490, 492-493 (1935) ("Probation or suspension of sentence comes as an act of grace to one convicted of a crime, and may be coupled with such conditions in respect of its duration as Congress may impose"), with *Gagnon* v. *Scarpelli*, 411 U. S. 778, 782, n. 4 (1973) ("[A] probationer can no longer be denied due process, in reliance on the dictum in *Escoe* v. *Zerbst*, that probation is an 'act of grace'" (citation omitted)). See also *Morrissey*, 408 U. S., at 482.

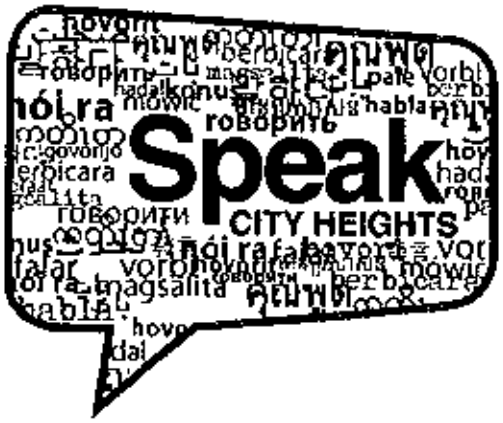
[6] The Court devotes a good portion of its analysis to the recidivism rates among parolees in California. See *ante*, at 853-854. One might question whether those statistics, which postdate the California Supreme Court's decision to allow the purportedly recidivism-reducing suspicionless searches at issue here, actually demonstrate that the State's interest is being served by the searches. Cf. Reply Brief for Petitioner 10, and n. 10. Of course, one cannot deny that the interest itself is valid. That said, though, it has never been held sufficient to justify suspicionless searches. If high crime rates were grounds enough for disposing of Fourth Amendment protections, the Amendment long ago would have become a dead letter.

[7] As the Court observes, see *ante*, at 856, n. 5, under California law "an officer is entitled to conduct suspicionless searches only of persons known by him to be parolees." Brief for United States as *Amicus Curiae* 20 (citing *People* v. *Sanders*, 31 Cal. 4th 318, 331-332, 73 P. 3d 496, 505 (2003)). It would necessarily be arbitrary, capricious, and harassing to conduct a suspicionless search of someone without knowledge of the status that renders that person, in the State's judgment, susceptible to such an invasion.

What It Means When Police Ask: 'Are You on Probation?'

Posted By *Megan Burks* On January 30, 2014 @ 1:01 pm

Traffic stops are often at the center of claims that police officers engage in racial profiling. They're the most common form of contact between police and the community, and some vehicle code violations can feel a bit arbitrary [1] — like having an air freshener dangling in your windshield.



[2]

But Police Chief William Lansdowne said a handful of racial profiling complaints [3] against the department in recent years – none were sustained – point to at least one moment where the line between routine and racial begins to blur for drivers: when an officer asks whether they're on probation or parole.

Residents in predominantly minority neighborhoods say the question is often the first [4] one they're asked, and is too broadly applied. It was the focus of several emotional testimonies residents made at Wednesday's committee hearing on racial profiling [5].

"We don't have a stop-and-frisk problem. We have an, 'Are you on probation or parole?' problem," Lei-Chala Wilson, president of the local NAACP, said at the meeting.

Lansdowne has already said he would issue a training bulletin [3] advising officers to be more sensitive with the question. But for officers, there's a lot of utility in asking it.

What are cops getting at with the probation question?

If a person is on probation or parole, there's a good chance he or she has waived the right to refuse being searched.

A fourth waiver [6] is a condition of parole or probation that says an individual has given up his or her Fourth Amendment protections against unwarranted searches and seizures while under state or county supervision. Though the term "fourth waiver" refers to the actual agreement, it's often personified to describe someone who's under such an order.

Usually police must have [1] reason to believe a person violated, or intends to violate, the law when making a stop. But if a police officer knows an individual is a fourth waiver, he or she has no obligation to prove reasonable suspicion [1] before initiating a search. The officer can conduct a body, vehicle or home search without cause, so long as it doesn't cross the line into harassment.

The courts intended for the arrangement to help rehabilitate former inmates. If a law enforcement officer can approach them at any time, they're less likely to engage in the sorts of risky behaviors that put them back behind bars.

Though the contracts are uniform and automatic for parolees coming out of state prison, probationers under county supervision will typically only have one if their crime involved drugs, theft or weapons. And the judge can tailor the terms of the agreement to cover only searches dealing with the crime for which they were convicted.

Isn't the question too broad then?

Officers are required by law to know whether the fourth waiver actually exists before conducting a fourth waiver search. The courts have ruled finding out after the fact doesn't protect an officer. They also should know the full scope of a probationer's individual waiver.

But in San Diego, there's really no such thing as an individual waiver, said retired Deputy District Attorney Robert Phillips. He writes legal briefs [6] informing law enforcement officers throughout the state of new court decisions on search and seizure law.

"The judges have all gotten together at some point, apparently, and have a standard set of fourth waiver conditions that are about as inclusive as the state parole fourth waiver,"

Phillips said. "So in San Diego County, the cops have it easy. If they find someone on a fourth waiver, the cop knows it covers everything."

So asking whether someone is on probation or parole is basically a shortcut assessment of the rights an individual has and the procedures an officer must follow.

Yeah, but I didn't go to jail or prison.

Too broad an application of the question – which civil rights groups say is happening in southeastern San Diego – can breed resentment among residents. If officers ask virtually everyone they stop — or everyone they stop in a certain neighborhood — whether they're on probation, community members might assume police believe that most people of color are criminals who have been to jail.

That leads to a breach of trust, but it isn't a breach of law.

Unless an individual has been stopped with valid reasonable suspicion – he or she was speeding, for example, or fits the description of a criminal suspect beyond just sharing the same skin color – asking the question is considered a consensual contact. Under the law, it's really no different than an officer saying hello on the street.

It becomes a detention – and subject to the Fourth Amendment for those whose rights are still intact – if the exchange is prolonged or becomes accusatory. *United States v. Summers* puts it this way: It's not consensual if anything happens that would have "indicated to a reasonable person that he was not free to leave."

The courts have already ruled on the obvious argument here. *United States v. Drayton* says an officer being uniformed and armed, though intimidating, is not enough to turn a consensual contact into a detention. Nor is asking to see an individual's hands, inquiring about illegal activity and asking a passenger to get out of the car, said Phillips [6].

But individuals have the right not to respond, and their silence shouldn't raise reasonable suspicion – even if they're in a high-crime area, Phillips said.

Knowing whether a stop is consensual, however, can be tricky. And choosing not to comply with safety measures like showing your hands could cause problems.

Wilson, of the local NAACP, suggested a simpler solution Wednesday that puts the onus on police officers.

"Use a drivers license, you can find out that question," she said, referring to officers' ability to run a person's license through their database.

Doing so still counts as a consensual contact if an officer does it quickly, Phillips said. It's also a less loaded question.

URLs in this post:

[1] can feel a bit arbitrary: http://voiceofsandiego.org/2014/01/09/when-police-can-and-cant-pull-you-over/
[2] Image: http://voiceofsandiego.org/wp-content/uploads/4dd6b969e2f1c.image.jpg
[3] handful of racial profiling complaints: http://voiceofsandiego.org/2014/01/06/san-diego-has-fallen-behind-on-combating-police-racial-profiling/
[4] often the first: http://www.youtube.com/watch?v=mgy-Cbz-nXo&list=PLEA8jQeaUvDvUmVJsDNodsUfWnyGk_6MP&feature=c4-overview-vl
[5] committee hearing on racial profiling: http://voiceofsandiego.org/2014/01/29/takeways-from-the-racial-profiling-hearing/
[6] fourth waiver: http://www.sdsheriff.net/legalupdates/docs/search2013.pdf

Lee, Katherine

From: PRC (Police Review Commission)
Sent: Monday, April 29, 2019 5:10 PM
To: Lee, Katherine
Cc: Norris, Byron
Subject: FW: Got Endorsement for SB233?
Attachments: List of Supports of SB233.docx

From: Maxine [mailto:mistressmax@mindspring.com]
Sent: Monday, April 29, 2019 5:06 PM
To: PRC (Police Review Commission) <prcmailbox@cityofberkeley.info>
Subject: Got Endorsement for SB233?

Dear Berkeley Police Review Commission,
I saw the article supporting a policy that allows us sex workers to report crime. That's great. We are hoping you can add your name in support of
SB233. https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB233
Its sponsored by **Assembly Member Quirk and San Francisco Senator Scott Wiener.** https://sd11.senate.ca.gov/news/20190211-senator-wiener-introduces-legislation-protect-sex-workers-arrest-when-reporting

Here are the list of supporters so far. We hope you can write a letter to the sponsors and let them know of your support too.
Thanks so much and if you have any questions, please do call me or contact the sponsors' offices.
Maxine Doogan
Erotic Service Providers Legal, Education and Research Project
415-265-3302

Crime & Courts Sunday, April 28, 2019 Berkeley Police Department implements policy changes to protect sex workers

https://www.dailycal.org/2019/04/28/berkeley-police-department-implements-policy-changes-to-protect-sex-workers/?fbclid=IwAR29dSx10FnjUV9zjGiUkg-RiAqoBMLwLTTY1kxM-AA_AIhReY2MDqUFhEk

THE DAILY CALIFORNIAN
Crime & Courts
Sunday, April 28, 2019

Berkeley Police Department implements policy changes to protect sex workers

By Sasha Langholz | Staff

The Berkeley Police Review Commission, or PRC, recommended changes to a policy that was implemented by the Berkeley Police Department on April 5 and is designed to protect sex workers by allowing individuals to come forward to report violent crimes without fear of being prosecuted for prostitution or misdemeanor drug offenses.

Berkeley's implementation of this policy was inspired by San Francisco's "Prioritizing Safety for Sex Workers" policies, according to PRC Commissioner Ismail Ramsey. According to Ramsey, exploring a similar change in Berkeley made sense after observing the media attention received from the passing of the San Francisco legislation and the studies that detailed violent crimes against sex workers.

San Francisco was the first in the country to enact this type of policy, according to a January 2018 press release from the San Francisco Department on the Status of Women. According to Johanna Breyer, a co-founder and former executive director of St. James Infirmary, the policy was designed to mitigate the harm experienced by sex workers.

"Our hope for this policy is to reduce the harm experienced by sex workers, in particular, women of color and transgender women engaged in the sex trades," Breyer said in the San Francisco press release.

According to Ramsey, studies documenting violent crimes against sex workers aided in the commission's decision to implement changes. One study conducted by the Sex Worker Environmental Assessment Team, or SWEAT, was published by UCSF and St. James Infirmary and sampled more than 200 cisgender female sex workers from 2003 to 2007.

The SWEAT study found that 32 percent of those surveyed reported being physically attacked while doing sex work, 29 percent reported being sexual assaulted while doing sex work, and 76 percent reported a history of being arrested. In this study, of the 174 women who tried to report crimes to police, 37 percent rated their experience as "bad" or "very bad." Additionally, some reported being threatened with arrest if they did not have sex with the officers.

Of the 174 women who tried to report crimes, more than a third "reported verbal, emotional, physical, sexual abuse by law enforcement," the study said. Ramsey said that after seeing the studies, it was clear there is a need for sex workers to feel safe.

After enactment of the San Francisco policy, the PRC assembled a Prioritizing Safety for Sex Workers Subcommittee that evaluated anecdotal evidence from women coming forward and collaborated with the Berkeley Commission on the Status of Women to formulate the changes. A member of the Berkeley Commission on the Status of Women joined the subcommittee to aid in the recommendations.

Ramsey emphasized that whether someone is voluntarily or involuntarily involved in the work, it should be done safely.

"We want to protect all people in our society from violence," Ramsey said.

Contact Sasha Langholz at slangholz@dailycal.org and follow her on Twitter at @LangholzSasha.

List of Supports of SB233

St. James Infirmary
US PROStitutes Collective
Erotic Service Providers Legal, Education, and Research Project
Sex Workers Outreach Project, Sacramento
ACLU of California
Alexandra Lutnick, PhD
Adult Performer Advocacy Committee
ALPA Health
Asian Pacific Legal Outreach
Board of Supervisors of the City and County of San Francisco
California Latinas for Reproductive Justice
California Nurse-Midwives Association
California Women's Law Center
City of Oakland
City of West Hollywood
Conference of California Bar Associations
Desert AIDS Alliance
Desiree Alliance
Ella Baker Center for Human Rights
Equality California
Gender Health Center
Human Impact Partners
Legal Services for Prisoners with Children
Los Angeles LGBT Center
National Center for Lesbian Rights
National Center for Transgender Equality
Positive Women's Network
Public Health Justice Collective
Religious Sisters of Charity
San Francisco Department on Status of Women
San Francisco District Attorney's Office
San Francisco Police Department
Santa Barbara Women's Political Committee

Sex Workers Outreach Project, Los Angeles
Sex Workers Outreach Project, USA
SF AIDS Foundation
The Adult Performer Advocacy Committee
The Harvey Milk LGBTQ Democratic Club
The Women's Foundation of California
Transgender Service Provider Network of Los Angeles
Young Women Freedom's Center
200+ individuals

AMENDED IN SENATE APRIL 23, 2019

AMENDED IN SENATE APRIL 11, 2019

AMENDED IN SENATE MARCH 11, 2019

SENATE BILL No. 233

Introduced by Senator Wiener
(Principal coauthor: Assembly Member Quirk)
(Coauthors: Assembly Members Carrillo and Friedman)

February 7, 2019

An act to repeal and add Section 782.1 of the Evidence Code, and to add Section 647.3 to the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 233, as amended, Wiener. Immunity from arrest.

Existing law criminalizes various aspects of sex work, including soliciting anyone to engage in, or engaging in, lewd or dissolute conduct in a public place, loitering in a public place with the intent to commit prostitution, or maintaining a public nuisance. Existing law, the California Uniform Controlled Substances Act (CUCSA), also criminalizes various offenses relating to the possession, transportation, and sale of specified controlled substances.

This bill would prohibit the arrest of a person for a misdemeanor violation of the CUCSA or specified sex work crimes, if that person is reporting a crime of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary, or another violent crime. The bill would also state that possession of condoms in any amount does not provide a basis for probable cause for arrest for specified sex work crimes.

Existing law specifies a procedure by which condoms may be introduced as evidence in a prosecution for various crimes, including soliciting or engaging in lewd or dissolute conduct in a public place, soliciting or engaging in acts of prostitution, loitering in or about a toilet open to the public for the purpose of engaging in or soliciting a lewd, lascivious, or unlawful act, or loitering in a public place with the intent to commit prostitution.

This bill, instead, would prohibit *introducing* the possession of a condom as evidence *in the prosecution* of a violation of soliciting or engaging in lewd or dissolute conduct in a public place if the offense is related to prostitution, soliciting or engaging in acts of prostitution, loitering in a public place with the intent to commit prostitution, or for maintaining a public nuisance.

The California Constitution includes the Right to Truth-In-Evidence, which requires a ⅔ vote of the Legislature to pass a bill that would exclude any relevant evidence from any criminal proceeding, as specified.

Because this bill would exclude from a criminal action evidence about a person's liability for an act of prostitution that is otherwise admissible, it requires a ⅔ vote of the Legislature.

Vote: ⅔. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

SECTION 1. Section 782.1 of the Evidence Code is repealed.

SEC. 2. Section 782.1 is added to the Evidence Code, to read:

782.1. The possession of a condom is not admissible as evidence *in the prosecution* of a violation of subdivision (a) or (b) of Section 647 of the Penal Code if the offense is related to prostitution, or Section 372 or 653.22 of the Penal Code.

SEC. 3. Section 647.3 is added to the Penal Code, to read:

647.3. (a) A person who is reporting a crime of sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, burglary, or another violent crime shall not be arrested for either of the following:

(1) A misdemeanor violation of the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code).

(2) A violation of subdivision (a) or (b) of Section 647 if the offense is related to an act of prostitution, or of Section 372 or 653.22.

(b) Possession of condoms in any amount shall not provide a basis for probable cause for arrest for a violation of subdivision (a) or (b) of Section 647 if the offense is related to an act of prostitution, or of Section 372 or 653.22.

O

Senator Wiener Introduces Legislation to Protect Sex Workers from Arrest when Reporting Violent Crimes & to Prohibit Use of Condoms as Evidence of Sex Work

Senate Bill 233 prohibits the arrest of people involved in sex work when they come forward as a witness or victim of a specified violent and serious crime

February 11, 2019
San Francisco – Today, Senator Scott Wiener (D-San Francisco) announced legislation to protect sex workers from arrest when they report a serious and violent crime or come forward as a witness to a violent crime. These crimes include, for example, sexual assault, human trafficking, stalking, robbery, assault, kidnapping, threats, blackmail, extortion, and burglary. Separately, Senate Bill 233 ensures that the possession of condoms may not be used as probable cause to arrest someone for sex work. SB 233 prioritizes public safety by ensuring that witnesses and victims are able to report crimes without the fear of arrest and criminalization. By protecting workers who carry condoms, SB 233 improves public health outcomes encouraging safer sex practices and not discouraging sex workers from carrying condoms.

Individuals who engage in sex work experience violent crimes at a disproportionally high rate. A 2014 study by the University of California San Francisco and St. James Infirmary (a peer-based occupational health and safety clinic for sex workers of all genders) found that 60% of sex workers experience some form of violence while working. Specifically, 32% of sex workers reported a physical attack while engaging in sex work, and 29% reported being sexually assaulted while engaging in sex work. Meanwhile, the same report found that 40% of sex worker interactions with law enforcement, when the sex worker was a victim of a violent crime, were rated as negative experiences. SB 233 seeks to remedy this problem by preventing sex workers who report violent crimes from being treated as a criminal themselves. The more sex workers feel comfortable reporting violent crimes, the easier it will be for law enforcement to apprehend violent criminals and rescue victims of human trafficking.

"We're all worse off when crime victims do not feel safe coming forward, for fear of arrest," said **Senator Wiener**. "This legislation is about protecting victims and increasing public safety. Too many sex workers are victimized, and the last thing we need is for sex workers to be further victimized by being arrested when they report a crime. If sex workers risk arrest for reporting a crime, they simply won't come forward, and violent criminals will go free. We also need to make it easy and safe for sex workers to access condoms. Using condoms as evidence of sex work creates a huge incentive for sex workers not to carry or use them. Criminalizing possession of condoms undermines our efforts to reduce HIV prevention."

SB 233 prohibits law enforcement from relying on possession of condoms as probable cause that an individual is engaging in sex work. Treating condoms as evidence of sex work exacerbates an already unsafe work environment because it discourages sex workers from practicing safer sex. People engaged in sex work are already thirteen times more likely to contract HIV. Human Rights Watch reported that one woman in Los Angeles was so frightened to be caught with condoms by police that she had to use a plastic bag as a condom to try and protect herself against HIV and other sexually transmitted infections. It is in the interest of public health to support the use of condoms and not criminalize individuals who carry them. The San Francisco District Attorney's office has already adopted this practice and committed to not use condoms as evidence when prosecuting someone for sex work.

"Predators view sex workers as easy targets because the illegality of their work makes the police a natural threat; abusers know most sex workers will never go to the police, and they take advantage of that," said **Pike Long, MPH, Deputy Director of St. James Infirmary**.

We know that most people involved in sex work, including those who are experiencing exploitation, do not go to the police when they have been victimized," said **Dr. Alexandra Lutnick, Senior Research Scientist with Aviva Consulting.** "This legislation is the first step towards creating a social and political environment in California where people can seek help when they are victims of violence

While some police departments, such as the San Francisco Police Department, have already set guidelines to prohibit the arrest of sex workers who are coming forward as victims or witnesses of various crimes, it is important that California promote public safety and health by adopting this policy statewide. SB 233 will prioritize the safety of workers, communities, and public health, by ensuring victims and witnesses of sexual assault, human trafficking, stalking, kidnapping, assault, and other serious crimes feel safe reporting these crimes to authorities.

"US PROStitutes Collective welcomes California bill SB 233, Improving Sex Worker Health & Safety," said **Rachel West, Spokesperson for US PROStitutes Collective**. "Giving immunity from arrest to sex workers who report violence will help reduce attacks as women can come forward without fear that they will be prosecuted for prostitution offences. Violent men often target sex workers as they know they are less likely to be brought to justice. But the recent increase in police crackdowns in some areas of the San Francisco Bay Area is in direct contradiction with this Bill. These police operations must stop if safety is to be genuinely prioritized."

SB 233 is supported by St. James Infirmary, US Prostitutes Collective, Erotic Service Providers Legal, Education, and Research Project, and the Sex Worker Outreach Project. It is co-authored by Assemblymembers Bill Quirk (D-Hayward) and Laura Freidman (D-Glendale).

SB 233 was officially introduced on February 7 and will be set for a hearing in the coming months. Further amendments will be made to strengthen protections and clarify that the possession of condoms may not be used as evidence to prosecute someone for sex work. Full text of the legislation can be found here.

###

29

Office of the City Manager

ACTION CALENDAR
April 30, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Subject: Referral Response: Update on Various Referrals and Recommendations Regarding Stop Data Collection, Data Analysis and Community Engagement

RECOMMENDATION

Review and provide feedback on the Berkeley Police Department responses to inter-related Council and Police Review Commission referrals, reports and recommendations, including the Center for Policing Equity report recommendations, regarding stop data collection, data analysis, community engagement, and related topics.

INTRODUCTION

This report provides information regarding Council's November 14, 2017 Referral to "track yield rates, develop training to address disparities found through the yield rates, and implement policy and practice reforms that reflect cooperation between the Police Department and broader Berkeley community." This report further provides information on related recommendations from additional referrals and reports, from Council, the Police Review Commission, and the Center for Policing Equity.

BACKGROUND

The collection and analysis of stop data and force data has been the subject of several related Council referrals, including a report from the Police Review Commission and a report from the Center for Policing Equity. These reports have many common, related, or overlapping recommendations. A substantial list appears in Appendix A.

In 2017 and 2018, Department resources, capacity, competing priorities, and an unprecedented staffing shortage impacted progress on some of these recommendations.

Implementation of BPD's Body Worn Camera program was among the highest priorities in 2018, and the program is now fully implemented. Numerous referrals and recommendations call for implementation and/or use of camera footage to support training. Officers have recorded well over 28,000 videos since October 2018. Videos have already proven useful as learning tools, as evidence in criminal matters, and of great value in reviewing uses of force, as well as complaints of misconduct.

CURRENT SITUATION AND ITS EFFECTS

The Department plans include several projects that will address the recommendations and referrals. These projects are further described below.

Given these recommendations primarily concern car and pedestrian stops, and are based on data up to 2016, it should be noted that Department stop activity has declined over the past two years, likely due in part to staffing shortages, fewer motorcycle officers doing traffic enforcement, and other factors. Between 2017 and 2018: overall car stops declined 31%, while pedestrian stops were down 28%. Since virtually all of the recommendations arise from older data, and are related to officers' actions during these stops, consideration of the recent data must be made in the context of more recent reduced stop activity.

Fundamentally, the Department will continue to strive to police in a manner that is respectful, fair, equitable, constitutional, and with a focus on proactive attention to safety, along with appropriate accountability. The on-going analysis of the previous stop data remains valuable, and the context of the data is equally important to consider.

Project work will be undertaken, along with planned activities included in the biannual budget planning process, throughout 2019 and beyond. While numerous factors could impact progress on these, the Department will prioritize completing the projects described below.

1. Collecting Additional Stop Data; Preparing for RIPA Requirements

The Department recognizes the benefits of gathering additional data, and will soon be working on the best methods to achieve this goal of additional data collection.
BPD currently collects stop data through using a six-character data string that is attached to each Computer Aided Dispatch (CAD) incident. The resulting data is posted on the City's Open Data Portal in its raw form.

Far more impactful are the impending mandates of California's 2015 Racial and Identity Profiling Act, commonly known as RIPA. The RIPA legislation requires the collection of at least 19 (nineteen) categories of data, as compared to six currently collected by BPD. The Department's existing data collection method is not able to capture the data required by RIPA. The Department will be required to collect the RIPA-specified data set on Jan. 1, 2022. Larger agencies are already collecting RIPA data, using a variety of different solutions to meet RIPA requirements.

In an effort to position our Department to become an early adopter of the coming RIPA requirements, the Department is committed to implementing a data collection protocol that meets or exceeds RIPA requirements. To that end, a workgroup has been established to examine other agencies' methods for collecting data, and compare those solutions to the configurable software module currently possessed by BPD. This group will recommend a solution, and the Department will move forward with implementation. Ideally, this solution will not only capture RIPA data, but also any additional data that the Department may wish to collect.

The Department's currently licensed software includes a configurable module which could be used for officers to capture data, but staff is concerned that module's utility may be limited by a lack of interface with the computer aided dispatch system, resulting in challenges caused by numerous pieces of data having to be entered manually by officers. Manual entry of location data is problematic, as such data should properly be "geo-verified" and resulting data would need to be reviewed and validated prior to use for analysis.

Current data collected and the 2019 RIPA Template are included as Appendix B of this report. The difference is extremely impactful to data collection efforts.

Collecting this substantial amount of additional data for each car and pedestrian stop will impact operations, as officers will spend much more time entering data than the current practice of advising dispatch. The Department will work to mitigate these challenges to the greatest extent possible through the user interface design, including if possible integration with CAD to automatically populate fields such as date, time, officer, location, et al. A desired solution will minimize officer time, while using systems integration to increase and enhance data integrity.

2. Community Engagement and Data Analysis
Several recommendations focus on data analysis and community engagement in order to build trust, increase contact, and strengthen department-community relations.

Community engagement is an organizational priority, and is seen as an opportunity to not only share information, such as the data collected during stops, but to share contextual information about police activity. Our department's mission is to safeguard our diverse community. Given that mission, and the work we do in service to that mission, the department is seeking opportunities to share and discuss the data, and also to understand the perspectives of our diverse community on the fundamental question of what makes a community feel safest in their neighborhoods.

The department seeks to secure assistance to support analysis of stop data, to create tools to facilitate data analysis, to foster creation of a task force to review and discuss the data, including discussion with the community, and to create a community engagement strategy that builds on the Department's engagement activities. This work is being done through the RFP process, and will help to address a number of recommendations.

In addition, the Department will continue to provide data to the Center for Policing Equity, and continue to engage with CPE in the challenging problem of determining best analytical frameworks. CPE's report delivered in 2018 provoked questions of how best to analyze and interpret data from stops, and these questions remain unresolved. Continued work with CPE is desired to gain understanding from the data and analytical approaches.

The Department will improve the Open Data Portal's available stop data by converting all stop data from a six character string into six individual data fields on the Open Data Portal, thereby providing data in a more useful form. The Department seeks to make available on the Portal easy-to-use tools for the examination of posted data.

3. Force Policy Update; Data Collection; Release of Aggregated Data
Several recommendations relate to updating the Department's Use of Force policy, and to summarize reporting of use of force data.

To accomplish this, the Department will complete of the Use of Force policy revision, after which a new software system will be implemented for force reporting. This software will capture all use of force data. Summary Force Data will be reported to the Police Review Commission on a regular basis, and is anticipated to be placed on the Open Data Portal.

Use of Force Policy Revision; Software Implementation*

Task	Responsible	Timelines
Reconvened workgroup completing updated language within existing policy, to incorporating Council Referral	Workgroup including Operations, Use of Force Subject Matter Experts, Information Technology, Internal Affairs, Berkeley Police Association Rep.	Mid-May
Legal review	Legal, Chief	Mid-late May
PRC review	PRC, Chief	End of May
BPA Meet and Confer (as necessary)	BPA, Chief, Legal, HR	End of May, early June
Finalize Policy	Chief	Early June
Council Report	Chief/Staff	Late June
Implementation of Use of Force software system	Internal Affairs, DoIT	Late June
Implement Use of Force Data on Open Data Portal	DoIT	Late June

*Some tasks and timelines may overlap

4. Policy and Trainings as needed to address disparities
Several recommendations concern development of departmental policies and training to address disparities in policing as indicated through the data.

Any policy and training development would build upon a considerable body of current policy and previous related training.

The Berkeley Police Department has a long history of policies which reflect our commitment to constitutional policing without racial profiling, which is prohibited under Penal Code 13519(4)(f). Applicable policies include, for example:

Policy 401, Fair and Impartial Policing (formerly General Order B-4)
Police Regulation 282 Non-discrimination/Equal Employment;
Police Regulation 255 Obedience – Laws and Orders
Police Regulation 257 Enforcement of Law – Impartiality
Police Regulation 200 Misconduct – Duty to Report
Police Regulation 201 Misconduct –Supervisory and Command Officer Responsibilities
General Order P-26 Personnel Complaint Procedure
General Order H-4 Hate Crime Policy and Procedure

The Department has a long history of training to increase awareness—and thereby mitigate— the potential impacts of implicit bias, and to support policing which is based on treating people with dignity and respect, while avoiding an over-reliance of force in safeguarding our community, including, in part:

Procedural Justice Training 2017-2018
Fair and Impartial Policing training sessions 2010-2016
Tactical De-escalation Training 2016
Crisis Intervention Training 2011-present, ongoing
POST Biased-based Policing 2014

ENVIRONMENTAL SUSTAINABILITY

Implementation of software and software enhancements may assist with the data sharing via electronic formats thereby reducing the need for paper, supplies, ink and staff time to compile some information requests.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

RIPA Data Collection software costs are dependent on research, evaluation and comparison to the department's existing currently licensed software. Consultant costs estimated at $50,000. All projects require significant staff time.

CONTACT PERSON

Andrew Greenwood, Chief of Police, (510) 981-5700

ATTACHMENTS

1. Appendix A – Referrals and Recommendations, with notes
2. Appendix B – BPD Stop Data currently collected; RIPA Requirements

Appendix A: Referrals and Recommendations

Appendix A: Referrals and Recommendations

Notes in **(BOLD)** at the end of numerous recommendations denote ongoing or planned project work to address the recommendations. Many recommendations will be addressed through the same project, e.g. the RIPA implementation, Use of Force Policy, etc.

Referral to Address Disparate Racial Treatment and Implement Policy and Practice Reforms
November 14, 2017, Item 24

1. Tracking Yield rates **(RIPA)**
    a. Analyze whether officer-initiated or in response to calls for service or warrants
    b. Focus on reasons for disparate racial treatment and to identify any outliers.
2. Consider any other criteria that would contribute to a better understanding of stops, searches, citations and arrests and the reasons for such actions. **(RIPA)**
3. Develop training programs to address the organizational causes of any disparate treatment and outcomes by race uncovered by yield rates above, in accordance with the City's body worn camera policy, through examination of footage on police body cameras (e.g. more scenario-based training on procedural justice and the roots of disparate treatment, expanded de-escalation training.) **(RIPA)(TRAINING)**
4. Consulting and cooperating with the broader Berkeley community, especially those communities most affected by observed racial disparities, to develop and implement policy and practice reforms that reflect these shared values. Work closely with the PRC, providing the commission all legally available information that may be helpful to designing reforms. **(CONSULTANT; COMMUNITY ENGAGEMENT)**
5. Once released, BPD should analyze the final Center for Policing Equity report and propose improvements as needed.

PRC Report and Recommendations, "To Achieve Fairness and Impartiality"
April 24, 2018, Item 38a

A. Data Collection and Analysis Enhancements **(RIPA)**
    1. Add specific data elements to those already tracked. Maintain and analyze demographic data. Enhance the current web display for readability.
    2. Report trends regularly to PRC and City Council. Report stop data by officer (stripped of identifying information).
    3. Hire a data manager/analyst. **(BUDGET)**
    4. Enhance ability to correctly identify ethnicity of individuals.
    5. Report every use of force. **(FORCE POLICY & REPORTING)**
B. Address racial disparities shown in the data **(RIPA)(ANALYSIS)**
    1. Monitor stop, search, and enforcement/disposition outcomes across race.

2. Determine if disparities are generalized or reside in a subset of the department and develop effective mitigations including policy reviews, staff support, counseling and training, or other as appropriate.
3. Work closely with PRC to develop mitigations and track progress.
4. Develop early warning systems to minimize future problems of biased policing.

C. Body Worn Cameras **(Program implemented)**
1. Accelerate full deployment of body cameras.
2. Use camera footage to train officers and evaluate policies.

D. Other departmental steps
1. Partner with academic institutions.
2. Increase support for officer wellness and safety. **(DEPT WELLNESS PROGRAMS; GRANT SOUGHT)**
3. Strengthen informed consent procedures for search. **(RIPA)(POLICY)**
4. Strengthen requirements for officers to identify themselves. **(POLICY)**

E. Community relations **(CONSULTANT; COMMUNITY ENGAGEMENT)**
1. Prepare detailed action plan to build trust in and accessibility to the department, focused on communities of color.
2. Consult and cooperate with the broader community to develop and implement policy and practice reforms.
3. Increase positive community contact.

PRC Report and Recommendations, "To Achieve Fairness and Impartiality"
Referring Key Recommendations to the City Manager
April 24, 2018, Item 38b, Supp. 1

1. Departmental Action Plan **(DESCRIBED IN THIS ITEM)**
2. Officer Identification **(POLICY)**
3. Review and update BPD Policy surrounding Inquiries to Parole and Probation Status **(RIPA)(POLICY)**
4. Enhance Search Consent Policies **(RIPA)(POLICY)**
5. Reporting Data on the Public Data Portal **(ODP)**
6. Simplifying Public Data Portal Data Structure **(ODP)**
7. Collect Data on Frisks and Summons (in Berkeley: Pedestrian stops, Citations) **(RIPA)**
8. BPD Data Dashboards
9. Enhance Existing "Early Warning" Systems

Center for Policing Equity Recommendations
May 9, 2018

1. We recommend changing the use of force data capture protocol to register every use of force by BPD officers, regardless of weapon use, injury, or complaint. **(FORCE POLICY & REPORTING)**
2. We recommend that BPD monitor search and disposition outcomes across race, and arrest and disposition outcomes associated with use of force. In particular, BPD should collect and share data with respect to contraband (distinguishing

among drugs, guns, non-gun weapons, and stolen property) found during vehicle or pedestrian searches, and that it analyze data about charges filed resulting from vehicle and pedestrian stops. **(RIPA)**

3. We recommend that BPD collect and share more detailed data with respect to use of force. In particular, we recommend that it collect and analyze data about whether the and how the person resisted arrest, and about charges filed against persons involved in use of force incidents. **(FORCE POLICY & REPORTING)**
4. We recommend that BPD more clearly track, analyze, and share data with respect to whether law enforcement actions are officer-initiated, or responses to calls for service. **(RIPA)**
5. We recommend that BPD continue to affirm that the egalitarian values of the department be reflected in the work its officers and employees do. **(ONGOING, MISSION, POLICY)**
6. We recommend that BPD consult and cooperate with the broader Berkeley community, especially those communities most affected by observed racial disparities, to develop and implement policy and practice reforms that reflect these shared values. **(CONSULTANT; COMMUNITY ENGAGEMENT)**
7. We recommend BPD track yield rates (of contraband found at searches). **(RIPA)**
8. We recommend that BPD monitor patrol deployments, using efficient and equitable deployment as a metric of supervisory success. One way to promote equitable contact rates is to monitor racial disparities (not attributable to non-police factors such as crime) and to adjust patrol deployments accordingly.
9. We recommend that BPD track crime trends with neighborhood demographics in order to ensure that response rates are proportional to crime rates.
10. We recommend that BPD engage in scenario-based training on the importance of procedural justice and the psychological roots of disparate treatment in order to promote the adoption of procedural justice throughout the organization, and to protect officers from the negative consequences of concerns that they will appear racist. **(PROCEDURAL JUSTICE TRAINING COMPLETED)**
11. We recommend that values-based evaluations of supervisors be developed to curb the possible influence of social dominance orientation on the mission of the department. CPE research has found a significant relationship between social dominance orientation and negative policing outcomes in many police departments.
12. We recommend that BPD trainings include clear messaging that racial inequality and other invidious disparities are not consistent with the values of BPD. **(TRAININGS & POLICIES IN PLACE)**
13. We recommend leveraging the Police Review Commission, as well as ensuring inclusion from all groups in the community, to help review relevant areas of the general orders manual and provide a more integrated set of policies with clear accountability and institutional resources. **(ONGOING PRC SUBCOMMITTEE WORK)**

Direct the City Manager Regarding the Berkeley Police Department's Use of Force Policy
October 31, 2017, Item 26

1. Enhance BPD's use of force policy statement; and
2. Create a definition of use of force; and
3. Require that all uses of force be reported; and
4. Categorize uses of force into levels for the purpose of facilitating the appropriate reporting, investigation, documentation and review requirements and
5. Require Use of Force Report to be captured in a manner that allows for analysis; and
6. Require that the Department prepare an annual analysis report relating to use of force to be submitted to the Chief of Police, Police Review Commission and Council.
   (FORCE POLICY & REPORTING)

Appendix B:

BPD Data currently collected

DISPOSITION CODE (SIX DIGIT CODE)

AM3WCN

1. Race	2. Gender	3. Age	4. Reason	5. Enforcement	6. Car Search
A Asian	M Male	1 <18	I Investigation	A Arrest	S Search
B Black	F Female	2 18-29	T Traffic	C Citation	N No Search
H Hispanic		3 30-39	R Reas. Susp.	W Warning	
W White		4 >40	K Prob./Parole	O Other	
O Other			W Wanted		

Appendix B:
RIPA Reporting Requirements

AB 953: TEMPLATE BASED ON THE FINAL REGULATIONS

Additional data values for the stop of a student in a K-12 public school are listed in red.

1. **Originating Agency Identifier** (prepopulated field)

2. **Date, Time, and Duration of Stop**
   Date: (e.g., 01/01/19)
   Start Time (approx.): (e.g. 1530)
   Duration of Stop (approx.): (e.g. 30 min.)

3. **Location**
   - Report one (listed in order of preference): block number and street name; closest intersection; highway and closest highway exit. If none of these are available, the officer may report a road marker, landmark, or other description, except cannot report street address if location is a residence.
   - City:_____
   - Check here to indicate stop is of a student at K-12 public school: _____
     - Name of -12 Public School _____

4. **Perceived Race or Ethnicity of Person Stopped** (select all that apply)
   - Asian
   - Black/African American
   - Hispanic/Latino(a)
   - Middle Eastern or South Asian
   - Native American
   - Pacific Islander
   - White

5. **Perceived Gender of Person Stopped** (may select one from options 1–4 AND option 5, if applicable, or just option 5)
   1. Male
   2. Female
   3. Transgender man/boy
   4. Transgender woman/girl
   5. Gender nonconforming

6. **Person Stopped Perceived to be LGBT** (Yes/No) ("Yes" must be selected if "Transgender" was selected for "Perceived Gender")

7. **Perceived Age of Person Stopped** (input the perceived, approximate age)

8. **Person Stopped Has Limited or No English Fluency (check here if Yes _____)**

9. **Perceived or Known Disability of Person Stopped** (select all that apply)
   - Deafness or difficulty hearing
   - Speech impairment or limited use of language
   - Blind or limited vision
   - Mental health condition
   - Intellectual or developmental disability, including dementia
   - Disability related to hyperactivity or impulsive behavior
   - Other disability
   - None

AB 953: TEMPLATE BASED ON THE FINAL REGULATIONS

Additional data values for the stop of a student in a K-12 public school are in listed in red.

10. Reason for Stop (select one - the primary reason for the stop only)

- Traffic violation
  - Specific code (CJIS offense table; select drop down) and
  - Type of violation (select one)
    - Moving violation
    - Equipment violation
    - Non-moving violation, including registration violation
- Reasonable suspicion that person was engaged in criminal activity
  - Specific Code (drop down; select primary if known) and
  - Basis (select all applicable)
    - Officer witnessed commission of a crime
    - Matched suspect description
    - Witness or victim identification of suspect at the scene
    - Carrying suspicious object
    - Actions indicative of casing a victim or location
    - Suspected of acting as a lookout
    - Actions indicative of a drug transaction
    - Actions indicative of engaging in a violent crime
    - Other reasonable suspicion of a crime
- Known to be on parole/probation/PRCS/mandatory supervision
- Knowledge of outstanding arrest warrant/wanted person
- Investigation to determine whether person was truant
- Consensual encounter resulting in search
- Possible conduct warranting discipline under Education Code sections 48900, 48900.2, 48900.3, 48900.4, and 48900.7 (select specific Educ. Code section & subdivision)
- Determine whether student violated school policy

A brief explanation is required regarding the reason for the stop and must provide additional detail beyond the general data values selected (250-character maximum).

11. Stop Made in Response to a Call for Service (Yes/No) (Select "Yes" only if stop was made in response to call for service, radio call, or dispatch)

12A. Actions Taken by Officer(s) During Stop (select all that apply)

- Person removed from vehicle by order
- Person removed from vehicle by physical contact
- Field sobriety test conducted
- Curbside detention
- Handcuffed or flex cuffed
- Patrol car detention
- Canine removed from vehicle or used to search
- Firearm pointed at person
- Firearm discharged or used
- Electronic control device used
- Impact projectile discharged or used (e.g. blunt impact projectile, rubber bullets or bean bags)
- Canine bit or held person
- Baton or other impact weapon used
- Chemical spray used (e.g. pepper spray, mace, tear gas, or other chemical irritants)
- Other physical or vehicle contact
- Person photographed

AB 953: TEMPLATE BASED ON THE FINAL REGULATIONS

Additional data values for the stop of a student in a K-12 public school are in listed in red.

- Asked for consent to search person
  - Consent given
  - Consent not given
- Search of person was conducted
- Asked for consent to search property
  - Consent given
  - Consent not given
- Search of property was conducted
- Property was seized
- Vehicle impound
- Admission or written statement obtained from student
- None

12B. Basis for Search (if search of person/property/both was conducted; select all that apply)

- Consent given
- Officer safety/safety of others
- Search warrant
- Condition of parole/probation/PRCS/mandatory supervision
- Suspected weapons
- Visible contraband
- Odor of contraband
- Canine detection
- Evidence of crime
- Incident to arrest
- Exigent circumstances/emergency
- Vehicle inventory (for search of property only)
- Suspected violation of school policy

A brief explanation is required regarding the basis for the search and must provide additional detail beyond the general data values selected (250-character maximum). This field is not required if basis for search is "condition of parole/probation/PRCS/mandatory supervision."

12C. Contraband or Evidence Discovered, if any (during search/in plain view; select all that apply)

- None
- Firearm(s)
- Ammunition
- Weapon(s) other than a firearm
- Drugs/narcotics
- Alcohol
- Money
- Drug paraphernalia
- Suspected stolen property
- Cell phone(s) or electronic device(s)
- Other contraband or evidence

12D. Basis for Property Seizure (if property was seized; select all that apply)

- Safekeeping as allowed by law/statute
- Contraband
- Evidence
- Impound of vehicle

AB 953: TEMPLATE BASED ON THE FINAL REGULATIONS
Additional data values for the stop of a student in a K-12 public school are in listed in red.

- Abandoned property
- Suspected violation of school policy

Type of Property Seized (select all that apply)
- Firearm(s)
- Ammunition
- Weapon(s) other than a firearm
- Drugs/narcotics
- Alcohol
- Money
- Drug paraphernalia
- Suspected stolen property
- Cell phone(s) or electronic device(s)
- Vehicle
- Other contraband or evidence

13. **Result of Stop** (select all that apply)
    - No action
    - Warning (verbal or written): Code/ordinance cited (drop down)
    - Citation for infraction: Code/ordinance cited (drop down)
    - In-field cite and release: Code/ordinance cited (drop down)
    - Custodial arrest pursuant to outstanding warrant
    - Custodial arrest without warrant: Code/ordinance cited (drop down)
    - Field Interview Card completed
    - Noncriminal transport or caretaking transport (including transport by officer, transport by ambulance, or transport by another agency)
    - Contacted parent/legal guardian or other person responsible for the minor
    - Psychiatric hold (Welfare & Inst. Code, §§ 5150, 5585.20.)
    - Referred to U.S. Department of Homeland Security (e.g., ICE, CBP)
    - Referral to school administrator
    - Referral to school counselor or other support staff

14. **Officer's Identification (I.D.) Number** (prepopulated field)

15. **Officer's Years of Experience** (total number of years worked as a peace officer)

16. **Type of Assignment of Officer** (select one)
    - Patrol, traffic enforcement, field operations
    - Gang enforcement
    - Compliance check (e.g. parole/PRCS/probation/mandatory supervision)
    - Special events (e.g. sports, concerts, protests)
    - Roadblock or DUI sobriety checkpoint
    - Narcotics/vice
    - Task force
    - K-12 public school, including school resource officer or school police officer
    - Investigative/detective
    - Other (manually specify type of assignment)

PRICHETT RESIGNATION FROM PRC

May 1, 2019

Dear Councilmember Davila and Members of the Police Review Commission,

While I am grateful for having had the opportunity to serve my community and to influence police policy, I am resigning from the Police Review Commission. I want to thank you, the other PRC Commissioners and staff for their assistance as I learned how the system does and doesn't work.

It is my conclusion that the PRC, as it is presently constituted, is completely ineffective at addressing the concerns of the marginalized people in our city who are most vulnerable and most likely to be in need of assistance. The current PRC bears little resemblance to the scrappy agency that once challenged police practices and engaged the community in creating and revising policies, identifying when actual misconduct occurred and monitoring the functioning of the department. This was possible because of the access that the PRC had to information as well as the determination of city officials to guard against violations of the constitutional rights of our citizens.

In the current situation, the PRC has almost no access to data, information, reports or any source documents that could be used to evaluate police work in this city and so we are unable to provide actual oversight. The commission relies almost exclusively on anecdotal information and oral reports provided by BPD. Either BPD is not employing data based methods with which to evaluate their effectiveness or they are simply refusing to share this information with the PRC. In either case, without the cooperation of the department, the PRC cannot actually provide credible oversight. The Commission even wrote a letter to the City Attorney asking what information they believed we COULD look at and never even got a response. The situation is so extreme that the PRC Officer told me that I had faster and easier access to information as a citizen than as a commissioner on the PRC.

The lack of access to evaluative information is downright perilous. The PRC is often provided with opportunities to hear from the police perspectives. However, the PRC has no metrics by which to actually evaluate police effectiveness. We have yet to receive information that could help us to identify a) how much force is being used, b) how many cases are being closed or referred for prosecution, c) how effectively the budget is being maintained d) whether these allocations are actually helping the people of Berkeley e) what the (data informed) goals of the department even are from year to year. We have no data that would allow us to substantiate the often-stated claim that our police are among "the best in the nation". We are supposed to take it on blind faith that the police would "never do such a thing". To be clear: I am not saying that the police are not doing a good job. I am saying that none of the commissioners can honestly answer the question because we simply don't have the information to support or refute that claim.

Making any kind of fair determination of whether an officer engaged in misconduct is also not really possible. The standard of "clear and convincing evidence" for complaints is unreasonably high, especially for a process that supposedly does not require that complainants have or be attorneys in order to stand a chance of winning. The lopsided complaint procedures currently in place greatly favor the officer and anyone with a serious allegation of misconduct would be better off going directly to a courtroom to seek redress than to use this very flawed and demoralizing process.

From the lack of accommodation and assistance when filing a complaint to the insensitivity of some commissioners when it comes to consideration of issues of disability, trauma, mental illness and homelessness, there is no good reason to use this complaint process. What was once a relatively accessible agency that welcomed those with the courage to follow through on a complaint is now a place where complaints go to die. The PRC record of sustained complaints in recent years is abysmal and there has been a huge decline in recent years of people even trying to use the process. It seems that people with mental health disabilities or who are homeless stand virtually no chance of making a successful complaint and are therefore quite vulnerable to potential abuse.

Knowing some of the challenges when I joined the commission two years ago, I decided that I would focus on the policy side of things. Sadly, that function has also been greatly diminished. With the city's subscription to the Lexipol service, the entire binder of General Orders for the BPD is being rewritten in order to reduce the chances of liability and to further insulate police from accountability. With this massive revision, whole groups of General Orders are being approved by the PRC with almost no chance of citizen input or public participation. With NO communication with the general public, policies on the use of spit hoods, canines, tasers, and other dramatic changes are being considered and rubber-stamped. These policies are remaking the culture of the BPD while disregarding previous decades of collaborations with outside experts and community members in the shaping of BPD General Orders.

Finally, the inaction, lack of responsiveness and disregard by city leadership to concerns raised by the PRC is the final nail in the coffin of Berkeley's efforts at civilian oversight. It seems that those who could require the chief to comply with requests for information, who could implement some evaluation and controls on the department, who could fight for the independence of the commission and the most basic principles of good governance have turned a blind eye to the ways in which the power of the PRC has and continues to be eroded. I believe that the PRC must fight harder for basic access to information. It must stop simply accepting the delays and diversions of the Chief and demand some answers. Sadly, the PRC has become more of an obstacle to real reform because it provides the mistaken *illusion* that some form of police oversight exists, while it most certainly does not.

Councilmember, I will continue to advocate for the rights of the people and community control of police. I will work to support a charter amendment that would

remake how our city monitors and controls police functioning so that it functions at the pleasure of the people and is held accountable for what it does and does not do. I look forward to the day when our praise for the men and women of the department is not merely some hollow, obligatory refrain, but is a well-established and genuine acknowledgement of their commitment and excellence.

Sincerely,

Andrea Prichett

Audit Report
April 25, 2019

911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale

BERKELEY CITY AUDITOR

Promoting transparency and accountability in Berkeley government.

911 Dispatchers: Understaffing Leads to Excessive Overtime and Low Morale

Report Highlights

April 25, 2019

Findings

- It is taking longer than previous years for call takers to answer 911 calls and the Communications Center does not have enough call takers to answer the current 911 call volume. We also found that, with predicted population growth, the Communications Center would likely need additional resources in the future to maintain its emergency response services.
- Due to consistent understaffing, the Communications Center relies heavily on overtime to meet minimum staffing requirements, spending nearly $1 million in 2017 on overtime.
- Morale in the Communications Center is low and dispatchers feel unsupported. We found that there are some resources available for staff to manage stress; however, dispatchers often do not have time to access them.

Recommendations

We recommend that the Police Department conduct a staffing analysis to determine the appropriate staffing levels, create a recruitment and continuing training plan for dispatchers, establish a call taker classification, and implement automated scheduling software to provide information to inform future budgeting decisions, decrease the reliance on overtime, and relieve the burden placed on overworked staff.

We also recommend that the Police Department implement programs to increase morale and communication. These include recommendations to establish routine meetings with dispatch supervisors, sworn police, and fire personnel, and to establish a comprehensive stress management program.

Objectives

1. To what extent does the Communications Center, which answers 911 calls, have sufficient staffing to handle workloads and service demands?
2. What contributes to overtime use?
3. How do working conditions affect morale?

Why This Audit Is Important

The Police Department Communications Center serves as Berkeley's 911 public safety answering point, receiving all emergency and non-emergency police, fire, and medical calls in the city and dispatching public safety personnel to respond as appropriate. To ensure the wellbeing of the public, police officers, firefighters, paramedics, and dispatchers, the City must maintain a Communications Center that is appropriately staffed. Without sufficient staff, it takes longer for call takers to answer 911 calls. The faster the Communications Center can get a police officer, firefighter, or paramedic to the scene, the better the chances of a good outcome. The seconds it takes to answer and prepare a call for dispatch can mean the difference between life and death.

BERKELEY CITY AUDITOR

For the full report, visit:
http://www.cityofberkeley.info/auditor