



To: City of Raleigh Human Relations Commission
From: Raleigh Police Accountability Community Taskforce (PACT)
RE: Police accountability in Raleigh
Date: June 14, 2018

Introduction

Members of the Raleigh Human Relations Commission, thank you for your commitment to taking action for a Raleigh for all. We are a coalition of civil rights organizations and community leaders committed to building accountability, equity, and transparency in Raleigh policing since 2015. We know that our democracy is not whole when some of us have to live by different rules.

We're going to share stories, data, and recommendations to move the needle on accountability, equity, and transparency. Our recommendations focus on the system as a whole: when there are hundreds of dead fish washed up on the shore — you don't ask what's wrong with the fish, you ask what's wrong with the water. Well-intentioned police officers are "swimming" in a culture that consistently devalues black and brown bodies, from the laws they enforce to the way they are trained, supervised, and disciplined.

While no single policy will address all our challenges, the recommendations would represent a significant step forward. They are the result of years of conversations with community members about what is happening in the streets of Raleigh, research on what has worked or is promising in other cities, and some vision of how our city can be a leader in creating a safe and welcoming community for all.

Stories

The first time Raleigh PACT addressed the Human Relations Commission, dozens of us were feeling the pain of the loss of 26-year-old Akiel Denkins. Today, the tragedy of Kyron Hinton is close to our heart. It happened in our own backyard and implicates all of us regardless of what department was formally charged. Raleigh Police were on the scene and stood by while a community member was brutalized. Unfortunately, his experience is not unique. It's a story of use of force, selective enforcement, and a department unprepared to support people experiencing mental health challenges.

- In 1991, Ivan Ingram was killed by Raleigh Police during a drug bust at a boarding house. The officer said he had a gun and was a drug suspect. Neither was true.
- In 2013, Raleigh Police faced public scrutiny for assaulting students at Enloe High School during a water balloon fight.
- Also, in 2013, two young black men on scooters, Maurice Harden and Trindell Thomas were killed by an officer who was speeding.
- In 2013, Tommy Sadler, a white veteran experiencing a mental health episode died after police used a taser on him multiple times.

- In 2015, Carl King, a black man, died in Raleigh Police custody while experiencing a mental health episode.
- In 2015, passenger Charles Frails and driver
- In 2016, police shot and killed Akiel Denkins and Jaqwan Terry.
- In 2017, Raleigh Police officers shot at a young black man, Chijioke Madueke whose only weapon was a kitchen butter knife.

In none of these cases did *any* Raleigh Police officer even face a jury.

You can read more testimonials that PACT has collected in your packet and online [here](http://www.raleighpact.org/stories-1/):
<http://www.raleighpact.org/stories-1/>.

The Data ([PowerPoint here](#))

Opendatapolicing.com is an interactive database maintained by the Southern Coalition for Social Justice, a community lawyering organization. The website publishes traffic stop and search data mandated by a 2002 NC statute. It is updated weekly.

Here are some key data points from the most recent data made available:

- In 2017, Raleigh had the lowest number of stops on record (since 2002)
- However, the racial disparities in both stops and searches remain.
- Black drivers account for 54% of all drivers that have been stopped by RPD.
- Since 2013, black drivers have made up the majority of those stopped in Raleigh with the exception of 2014.
- 2017 had the most racially disparate search rate on record. 71% of all drivers who have been searched in Raleigh have been black vs. 20% white.
- The avg search rate for a black person in Raleigh is 7% (the statewide avg is 3 percent).
- There is a sharp increase in searches of Latinos going into 2018. This is a serious concern in this national climate and in a county with an immigration collaboration agreement. Anyone who ends up in handcuffs as a result of a search, even for something like a broken tail light, could end up in ICE custody in a County jail.

Another measure of bias in policing is low-level marijuana arrest data. National studies show that black and white populations use marijuana at about the same rates; yet in Wake County where RPD is the largest law-enforcement agency, black people represent 67% of low-level marijuana arrests but only about 21% of the population. RPD officers use marijuana-related charges much more frequently in majority-Black census tracts, majority People of Color tracts, and high-poverty tracts than they do in majority-white neighborhoods. It is clear, in Wake County, black people get arrested for what white folks do with impunity.

Lastly, we look at resist, delay, and obstruct charges because it is a catch-all charge, often used as a single charge, nationally disproportionately used against black people, and often dismissed in court but still causing financial havoc due to court fees or failure to appear charges. NC Central lawyer Scott Holmes says, "Usually, in those situations, the police have engaged in some kind of misconduct and are trying to cover it up by charging the person with resist, delay, and obstruct." In Raleigh, majority Black census tracts have more than twice as many RDO arrests per person compared with the city as a whole.

Our Recommendations

Strengthen the department's anti-bias policing policy with regular checks on officers' stop-and-search data to detect high-disparity officers.

This portal is currently being used by the Fayetteville Police Department to generate reports on officers' enforcement history using their unique ID known only to their supervisor. They use these reports to proactively identify patterns of biased policing in stops-and-searches or use of force compared to similarly positioned officers and take appropriate, escalating action -- first training, all the way up to dismissal if improvements aren't made. They only compare officers to officers covering "beats" with similar demographics. To create a culture of accountability, we need to take racial bias as serious as not being able to handle a weapon.

Reduce the bias in stops and searches by requiring written consent-to-search forms in department policy.

Thanks to great dialogue with City staff, RPD made significant improvements to its consent-to-search form in 2016. The form language was simplified -- stating clearly that we have the right to refuse or stop a consent search at any time. It was also made available in Spanish. Seeing your rights in writing empowers community to say no and challenges officers to consider the necessity of searches without probable cause. In Fayetteville, consent searches declined by 90%, the greatest decline being for black men. The Southern Coalition for Social Justice has informed us that there has been a stark decline in consent searches, consistent with patterns in cities where consent forms have been implemented. That's great and likely a reflection of the way the chief is directing the department. However, the department's official search policy only directs officers to use the forms "when possible." Durham and Fayetteville requires the form during all searches without probable cause. In order to cement the gains of this positive move we recommend that RPD amend its consent search policy to say that consent-to-search forms are required for all consent searches. We need to make sure this trend carries over even under future leadership.

Improve officer training by expanding Crisis Intervention Training to all foot patrol officers and their direct supervisors.

To maximize the number of officers who are experts in handling situations without reaching for their weapon and in identifying individuals who are having a mental health episode, we propose an expansion of the Crisis Intervention Training program.

Every law enforcement encounter has the potential to escalate and become dangerous if not handled properly. At this point a little over 25% of RPD is CIT-trained. In dialogue with the Chief Deck-Brown in 2016, we were told that their goal is to have a number of CIT-trained officers on-duty to call-in during a crisis. However, we believe that all officers who have contact with the public should undergo this training because a situation can turn critical and even deadly before the officer can be tapped in.

Our understanding is that this training is provided in collaboration with an NC mental health organization and the community college system and as such is not cost intensive other than the officer's staff time. Raleigh is a state leader in CIT training already. We should be proud of that, but it's not enough because our community is still suffering. We recommend that the department propose a reasonable timetable to get Raleigh to 100% CIT-trained.

Implement a body-worn camera program that protects people's rights and access.

This year RPD began its department-wide implementation of its body-worn camera program. PACT provided feedback on the details of the policy governing their use and it greatly improved. However, there are still some major gaps and some City Councilors have committed to monitoring the policy for improvements. Our recommendations are:

1. Disclosure: Create a process for requesting body camera footage that is more accessible to the community. Currently, to make a request to view footage, an individual or their representative must physically submit a form to RPD headquarters. It's a barrier for individuals with limited mobility. RPD should create an online form, which other departments do regularly. Our community faces enough barriers to justice without adding additional hurdles.
2. Bias: Minimize the bias in reporting that an officer experiences after watching body camera footage by requiring officers to write incident reports prior to watching any video footage just like the public. An officer may be less likely to write-up how a situation transpired if once they've watched the footage they know a certain part is not captured.
3. Auto-activation: Include auto-activated holsters in the 2019 budget to minimize officer discretion in activating the camera as much as possible in high-stake, fast-paced situations. This technology activates body cameras when an officer removes the weapon (gun or taser) from its holster. The Charlotte-Mecklenburg PD has piloted this technology and has issued a memo stating their intent to purchase and implement department-wide. The price of the holsters has not been made public yet by the manufacturer. We recommend that the City confer with Charlotte about their pilot and estimated costs in order to include these holsters in the 2019 budget.

Pass a resolution or make a legislative priority stating support for the creation of a Community Oversight Board that has power to investigate, subpoena, and discipline officers when there is injustice.

Our current accountability mechanism is not sufficient because it is inherently biased, the community perceives it that way so it is not used, it isn't transparent, and rarely leads to justice.

Not impartial: The Internal Affairs Division is housed within the same department that potentially violated someone's rights, staffed by former officers. It's the police policing themselves. There is an inherent conflict of interest when a department investigates itself.

As for the State Bureau of Investigations, they only get involved in extreme cases. That investigation is then turned over to the District Attorney, Lorrin Freeman, who on all other occasions works hand-in-hand with police to prosecute. This, again, is a conflict of interest. We need to have a mechanism in place to account for the daily assaults on the dignity of people of color and other marginalized communities, the cases that don't reach the news, but nonetheless erode public trust.

Perception: This perception and fear of the system is real. PACT members and our partners like "Save Our Sons" accompany community members to submit complaints: on one occasion a person ran into the officer who assaulted them. More often, residents are met with hostile environments, interrogation tactics, and dissuaded from submitting a formal complaint and encouraged to "discuss with the supervisor" as an alternative. In a city of 439,000 people, the Internal Affairs division of RPD has fielded an average of 39 complaints per year (when looking at the last five years). These numbers are a reflection of a faulty accountability mechanism and fear. On average, only 25 percent are sustained.

Lack of transparency: Internal Affairs investigations are also sealed to the public. If someone does submit their complaint, at the end, often many months later, they only receive a letter saying whether their case was “sustained” or not and details about their appeal options. No details on how that conclusion was reached -- those records are sealed by state law.

Accountability can only exist through impartial, external review by well-trained community members with subpoena, investigative, and disciplinary power. So what does that mean and how does Raleigh get there?

North Carolina has a range on citizen boards on the spectrum from advisory to review with varying powers. Our research shows that to be truly effective, a board must actually have teeth. This means:

1. Investigatory power: The board can conduct full investigations independent of whatever internal process the police department already has in place. This power requires adequate funding.
2. Disciplinary power: The board can determine disciplinary decisions that, barring a “clear error” in the board’s investigation, must be carried out by the chief.
3. Personnel file access: The board can access officers’ personnel files.
4. Subpoena power: The board can compel testimony and request documents from local law enforcement.

Board structure: Many community oversight boards receive training and financial support to carry out their responsibilities. Across the country, oversight boards are made up of community members who are either appointed, elected, or recommended and then confirmed by their city’s mayor, city council, or a community organization. Whatever the design, best practice is that a majority of board members are made up of directly-impacted people. Since the city manager directly oversees the police chief, the manager should not be involved in the selection to avoid the appearance of conflict of interest. We recommend the Newark, NJ model of composition: 1 member appointed by the mayor, 3 elected by council, 5 recommended to the mayor by each of 5 identified community organizations. However, the most important thing is to design a meaningful community engagement process to decide the structure once we’re at that stage.

Board process: These members would receive complaints directly from the public or appealed to them from Internal Affairs. They would have staff investigators to review cases who would then report to the board and hold hearings. They would use their subpoena power to compel testimony and request what are typically sealed personnel records. Hearings would be closed to the public to protect officer and resident privacy. However, the disposition and reasoning for the decision, absent identifying information, would be public. They then make a binding disciplinary recommendation using a discipline matrix previously negotiated with the police department, union, and board. The board itself reports to the City Council and the City’s audit department with annual reports on complaints, its operations, and recommendations on police department policy based on trends they see.

Legal authority: The state gives cities the power to convene boards at their discretion. However, an advisory board, like many NC cities have, don’t have an impact. The City Council can grant a board they convene investigatory and disciplinary power by local ordinance. Due to state law protecting access to personnel files, our challenge will be giving that board subpoena power and access to officer personnel records. Subpoena power and access to personnel records is essential to any meaningful independent investigation. Overcoming this will require (a) statewide legislation granting all municipalities the

authority to create police oversight boards with these powers or (b) state legislation granting the city of Raleigh the authority to create such a board.

The way forward: To begin this process, allies at the state legislature have asked for a demonstration of political will from Raleigh City Council that Raleigh will work toward a board if granted the authority by the state. There are two ways to do this: (1) a resolution asserting the Council's public support for a community oversight board. We have sample language for that resolution as a starting point; or (2) use the City's legislative priority agenda to indicate support. Like any other major city, Raleigh identifies legislative priorities to direct our lobbyist at the General Assembly. Putting subpoena power for a community oversight board on that agenda would demonstrate our commitment to this effort.

End the biased enforcement of marijuana possession by deprioritizing marijuana enforcement.

To decrease the use of marijuana enforcement as an excuse to search or target people of color, we propose the deprioritization of marijuana. As mentioned earlier, black people are targeted for marijuana use. Simply put, the law is applied differently to black folks than white people.

This selective enforcement of marijuana is landing high numbers of black and brown youth in jails, tarnishing their record, and imposing court fees that throw people into vicious cycles of criminal justice debt. Beyond that, we know that the suspicion of marijuana use is routinely used as the basis for disproportionate searches of people of color in our neighborhoods. Officers will say, "I smell marijuana" to claim probable cause and initiate a search when often times there is no smell. This kind of policing damages police-community relations and diverts law enforcement resources from issues that could make an impact in our neighborhoods. Oakland, California, and Fayetteville, Arkansas, are examples of two cities that have taken the lead on a marijuana Lowest Law Enforcement Priority (LLEP) initiative.

Everyday, police officers use discretion in law enforcement. They choose to overlook an expired tag and by their own admission in a memo provided to us by RPD in 2016 -- issue a citation rather than arrest someone for marijuana use. Implementing an LLEP initiative is a way to use that discretion to focus on offenses deemed more important to general public health, safety, and welfare than the possession of marijuana.

According to a memo provided to the Durham City Council and Manager in 2014 written by Ms. Frayda Bluestien, David M. Lawrence Distinguished Professor of Public Law and Government at UNC-Chapel Hill, NC city lawmakers are legally clear to direct city departments in this way. City Attorney McCormick disagreed with this legal analysis but with commitment from the Commission and Council, we can provide the legal backing and model legislation to move forward with this groundbreaking policy for NC.

Conclusion

The question before this Commission is whether it will sanction a culture of policing and a system where these stories and these numbers are the reality with continued silence or give the City Council the guidance it needs to move ahead with common sense reforms with a proven track record across North Carolina, the South, and the country.

We have also attached a packet of resources with the following:

1. Data on bias in Raleigh policing
 - a. Stop-and-search data from Opendatapolicing.com
 - b. Resist, delay, and obstruct (RDO) arrests by geography compiled by cartographer Tim Stallman and former reporter Sarah Ovaska

- c. Independent Weekly article on the use of RDO charges by police
2. Stories that PACT has collected on experiences with RPD
3. Model legislation
 - a. Raleigh resolution in support of Community Oversight Board
 - b. State bill authorizing a community oversight board with subpoena power in Charlotte
 - c. State bill authorizing community oversight boards with subpoena power statewide
 - d. Lowest Law Enforcement Priority (LLEP) ordinances
4. A peer-reviewed article outlining best practices for police community oversight boards
5. Document with “Frequently Asked Questions” prepared by PACT
6. Article on passage of Charlotte’s resolution in support of community oversight board with subpoena power
7. One-pager on PACT’s organizational timeline
 - a. Memos submitted to the City on behalf of our coalition since 2016 available at <http://www.raleighpact.org/our-timeline/>
 - b. Memos submitted by RPD and City Manager’s office in response to PACT’s recommendations
8. Model of Human Relations Commission recommendations on police accountability and racial equity from Durham

We are happy to take questions now, arrange time at a future date after you’ve had time to digest all that we have presented, submit any additional information to you, and/or connect you to our partner experts.

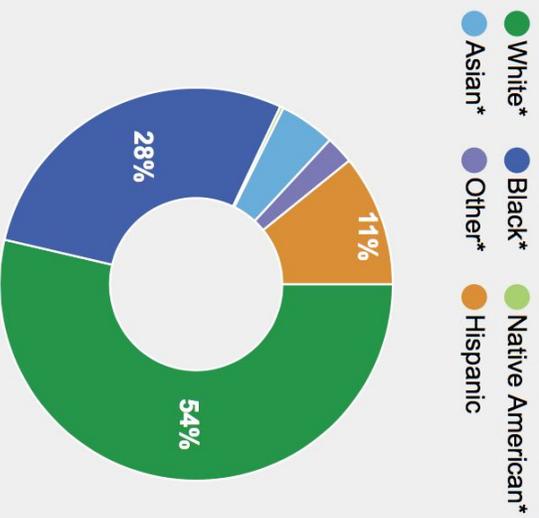
Best,

Surena Johnson
Barbara Smalley-McMahan
Jessica Lin
Ivanna Gonzalez

On behalf of Raleigh PACT
info@raleighpact.org

Local Population (percentage by race/ethnic composition)

This graph reflects the race/ethnic composition of the jurisdiction at the time of the most recent survey by the Census Bureau. It is included for comparative purposes. The actual local driving population within a given jurisdiction may vary significantly from census figures.



Tabular view of census data

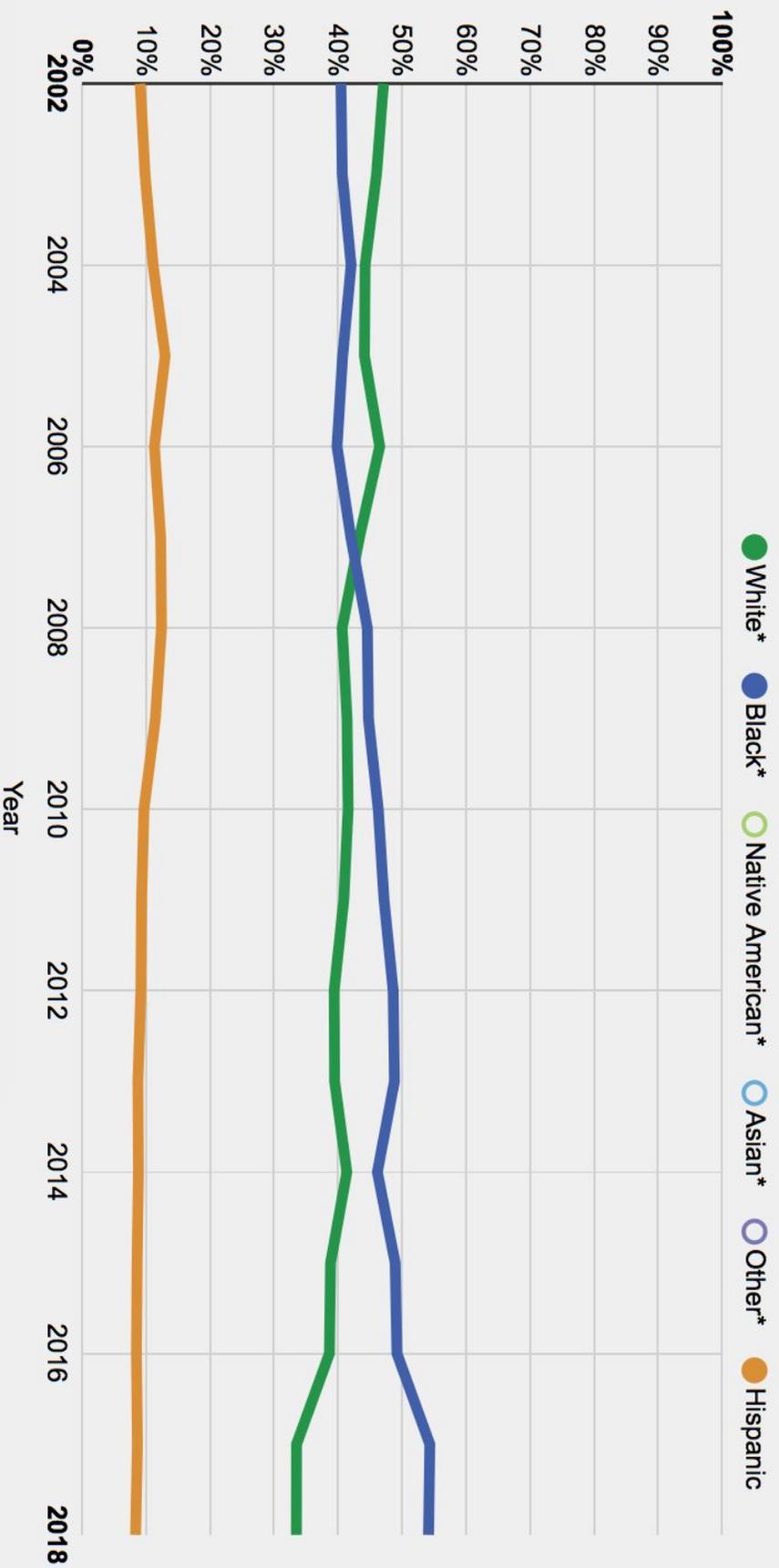
	White*	Black*	Native American*	Asian*	Other*	Hispanic
Population	236,721	125,334	1,233	20,193	10,122	47,723
Percent	53.6%	28.4%	0.3%	4.6%	2.3%	10.8%

* Non-hispanic

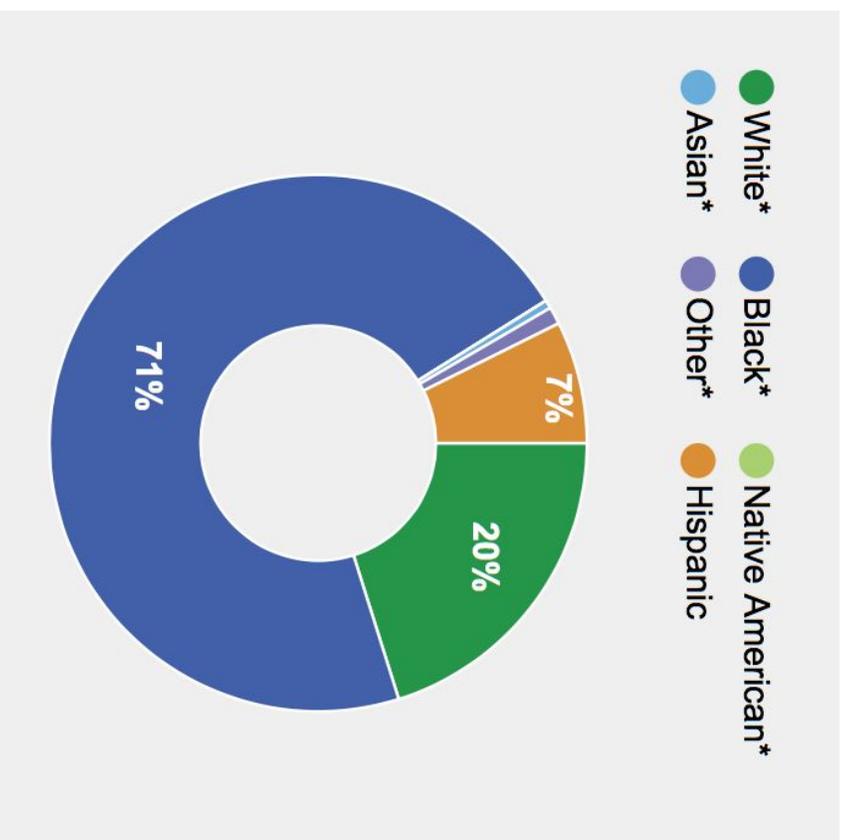
Longitudinal view of annual traffic stops

Chart

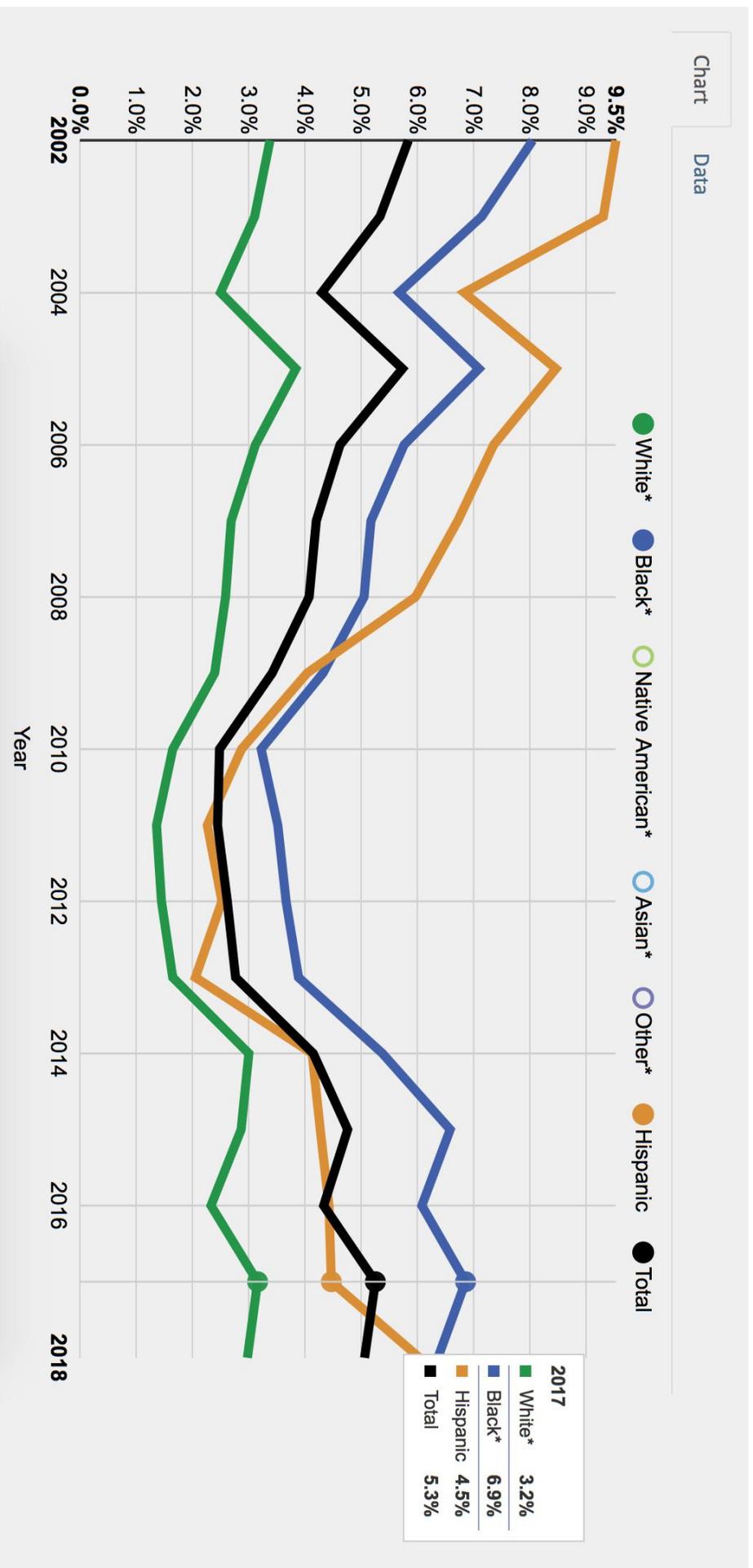
Data



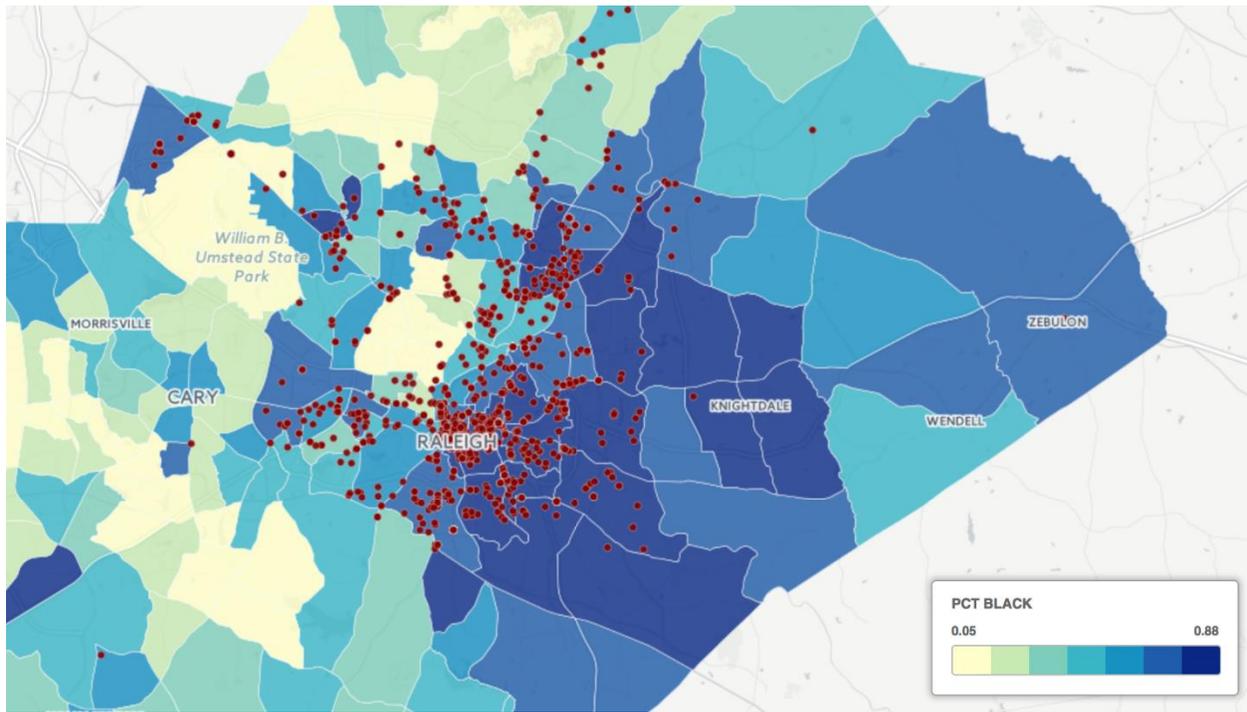
2017 Search Rate by Race/Ethnicity



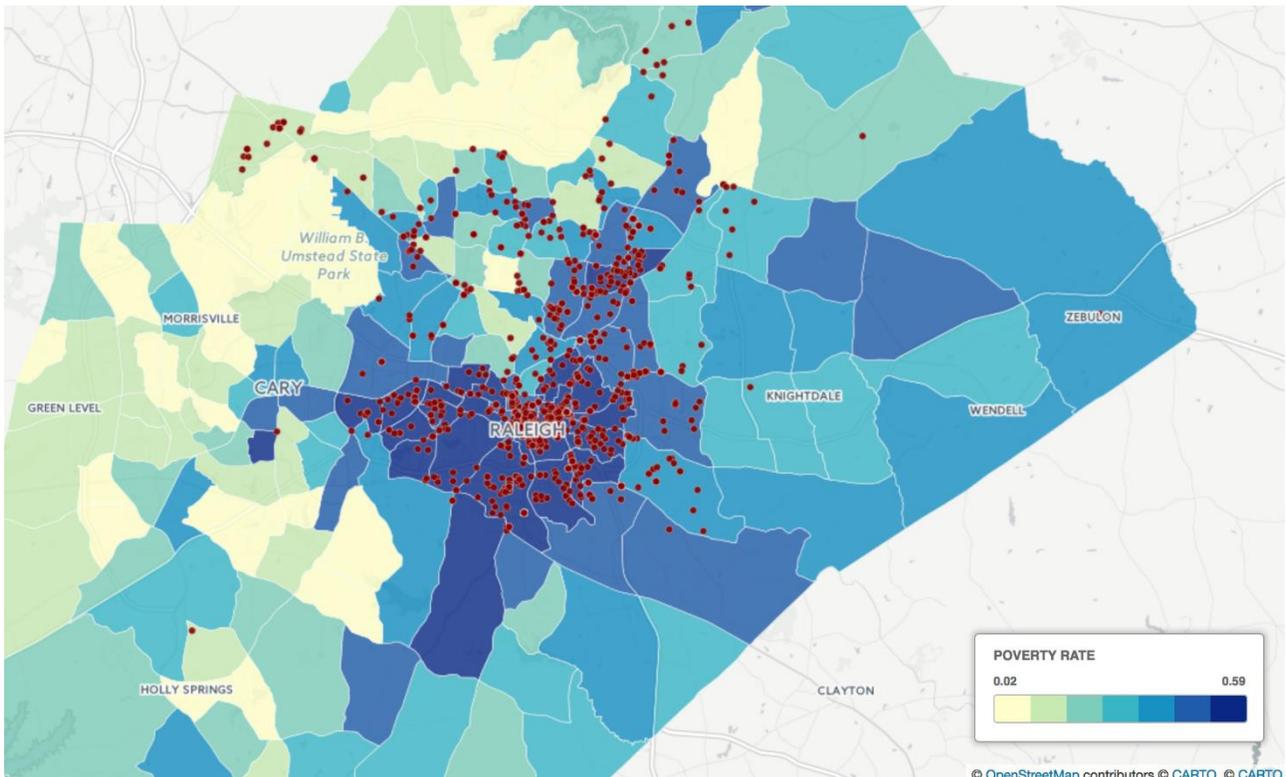
Departmental Search Rate by Race/Ethnicity



Map: RDO Arrests and Black neighborhoods in Wake County



Map: RDO Arrests and Poverty in Wake County



Attorney: 90 Percent of Durhamites Charged with Resisting Arrest Are Black

By Danny Hooley



Scott Holmes

Photo by Alex Boerner

Durham-based attorney Scott Holmes can't help but laugh when the police report is read to him over the phone.

After all, the alleged language used by his thirty-four-year-old client, Kevin Love, toward Durham police officer R.A. Ingram was pretty salty. But Holmes is quite certain about one thing: his client was likely charged with "resisting, delaying, and obstructing" a police officer because he is black.

And he says he has the stats to prove it.

Holmes says Love was arrested on February 8, 2015, for "taking a picture of an officer who was conducting a traffic stop. An officer got pissed off at him for trying to record him and charged him."

According to Ingram's report, Love "stopped and said, 'You are a real dickhead.' He then attempted to talk to the driver. I asked him to leave. He left, circled back, and talked to the driver again. He gave the driver his phone number."

"It started because I had received a seatbelt violation," says Love, "and about five or ten minutes after he let me go, after giving me the ticket, I saw him on another street, where he had stopped a car—it was like a BMW with dark tinted windows—and he was talking to the guy behind the passenger seat. And I knew the guy."

Hoping to prove in court that Ingram (who is also black, according to Love) was "just out there harassing people" that day, Love stopped and snapped a picture of the officer, who was in a patrol car. Ingram told Love to leave, and they argued.

"From my patrol vehicle, I asked Mr. Love to leave," Ingram wrote in his report. "He told me to 'shut the fuck up,' and remained talking to the driver."

Holmes says there's no way to know whether Ingram's report accurately reflects Love's comments. "The dash cam doesn't have audio, so you can't hear their conversations," he says.

According to Love, he was stopped again by Ingram and two other officers about a half an hour later, arrested, and taken downtown for booking. He was released on a \$500 unsecured bond and had to rescue his car from a towing lot, which wasn't cheap, he adds.

In the end, the audio-free dash-cam video was innocuous enough to get Love's case thrown out of court.

Holmes, an N.C. Central law professor, points out that many defendants—like Love—sign a waiver affirming that they won't need a court-appointed attorney to represent them for a nonviolent "resist, delay, and obstruct" charge, which is filed entirely at the discretion of an officer and, in law enforcement circles, is sometimes referred to as "contempt of cop."

Holmes says that, when he was in private practice, he sought out people charged with RDO and offered to defend them pro bono. He considered it a public service.

"One of my areas of pro bono service and concern was the kind of situation where somebody was charged with obstructing justice—and that's their only charge," he says. "Because, usually, in those situations, the police have engaged in some kind of misconduct and are trying to cover it up by charging the person with obstruction—or 'resist, delay, and obstruct.'"

He and his law students have recently compiled statistics showing that—as he put it in a tweet earlier this month—"90% of the people charged with nonviolent discretionary charge of obstructing an officer in Durham in the last 18 months were of color."

Holmes supplied the *INDY* with a list of those arrested for RDO between August 1, 2015, and February 29, 2016. He and his students found that, out of 195 people charged just with RDO—a class 2 misdemeanor usually not punishable by jail time, though the costs can be considerable and the arrest stays on a person's record permanently—only twenty were white.

Such disparities aren't unique to Durham. In recent years, studies have shown disturbing statistics for resisting-arrest charges in big cities like New York and San Francisco. A WNYC report showed that 15 percent of New York City officers made a staggering 50 percent of resisting-arrest charges in the city. And only 5 percent of those cops filed 40 percent of those charges, which shows how subjective they can be. Strikingly, the data also revealed that NYPD cops were far more likely to charge black people for resisting arrest than whites.

San Francisco's stats from 2010 through 2015 are similar to Durham's. African-Americans there were eight times more likely than whites to be charged with resisting arrest.

In an email to the *INDY*, Durham police spokesman Willie Glenn said the department was unable to confirm the accuracy of Holmes's findings. "This is not data the department has compiled," Glenn wrote.

This article appeared in print with the headline "Resisting, in Black and White"

Tags: Durham County, Police, black lives matter, Scott Holmes, NC Central University, NCCU, Durham, Durham Police Department

speaking of...



Two Weeks Ago, Durham Cops Threatened to Arrest Anyone Who Wouldn't Leave a Homeless Camp Near Downtown. Now What?
Jun 13, 2018



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Jun 11, 2018

latest in durham county



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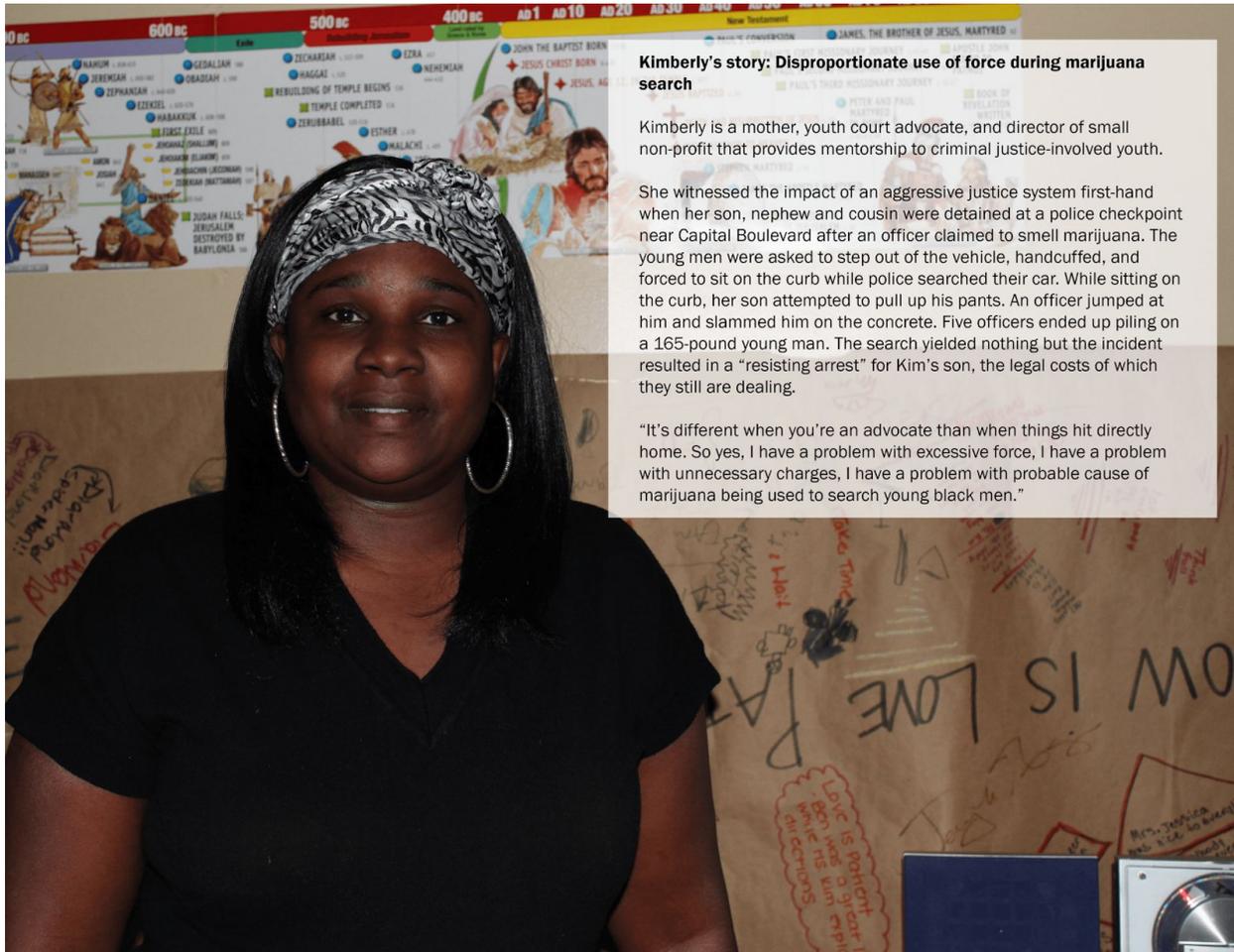
Durham Wants to Turn a Defunct Rail Line Into an Urban Greenway. Some Residents Worry It Will Force Them Out.
May 30, 2018



For the Second Straight Year, Southerners on New Ground Marked Mother's Day by Bailing Black Women Out of the Durham Jail
May 16, 2018

more by danny hooley

Stories Collected by Raleigh PACT of People's Experience with Raleigh Police Department

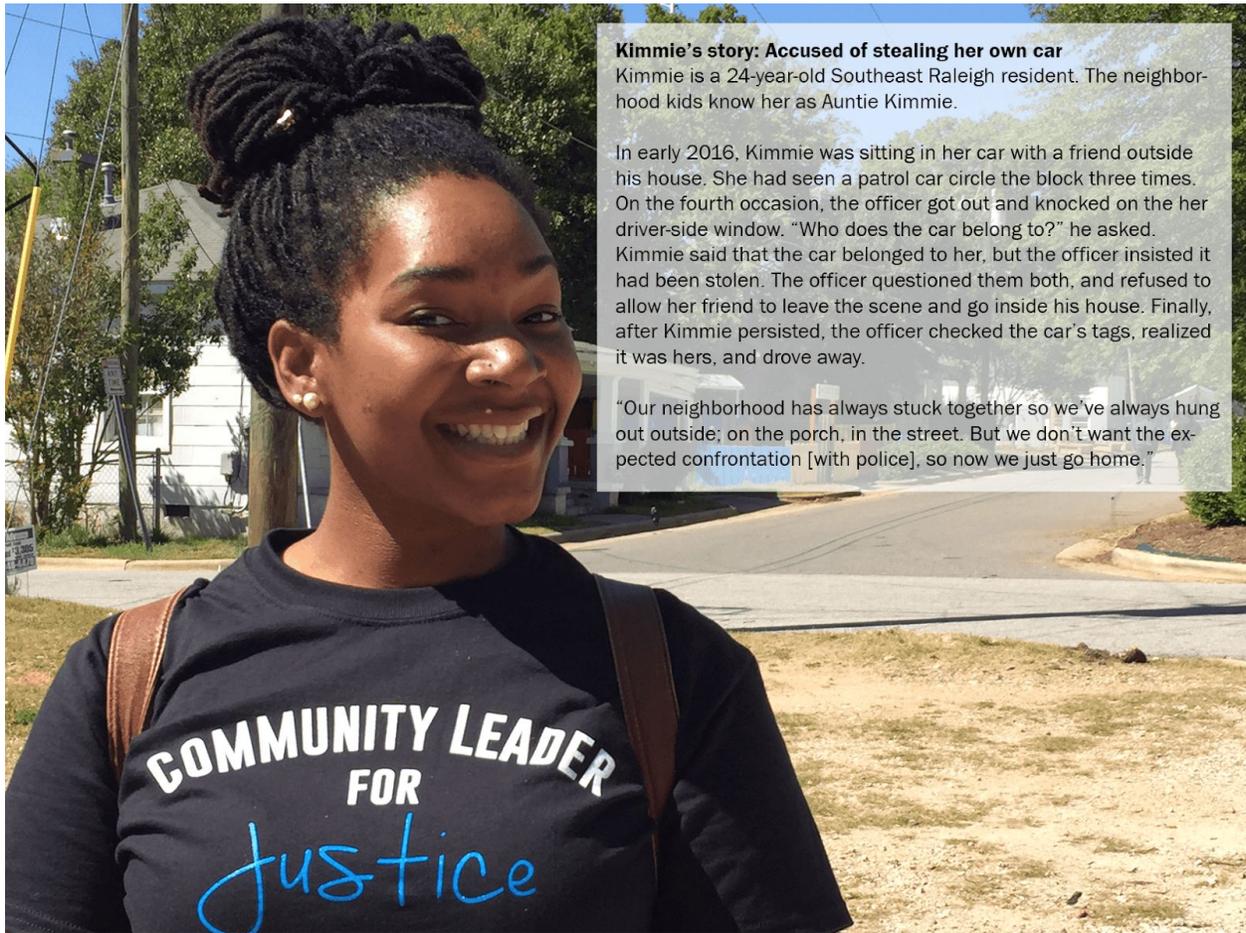


Kimberly's story: Disproportionate use of force during marijuana search

Kimberly is a mother, youth court advocate, and director of small non-profit that provides mentorship to criminal justice-involved youth.

She witnessed the impact of an aggressive justice system first-hand when her son, nephew and cousin were detained at a police checkpoint near Capital Boulevard after an officer claimed to smell marijuana. The young men were asked to step out of the vehicle, handcuffed, and forced to sit on the curb while police searched their car. While sitting on the curb, her son attempted to pull up his pants. An officer jumped at him and slammed him on the concrete. Five officers ended up piling on a 165-pound young man. The search yielded nothing but the incident resulted in a "resisting arrest" for Kim's son, the legal costs of which they still are dealing.

"It's different when you're an advocate than when things hit directly home. So yes, I have a problem with excessive force, I have a problem with unnecessary charges, I have a problem with probable cause of marijuana being used to search young black men."



Kimmie's story: Accused of stealing her own car

Kimmie is a 24-year-old Southeast Raleigh resident. The neighborhood kids know her as Auntie Kimmie.

In early 2016, Kimmie was sitting in her car with a friend outside his house. She had seen a patrol car circle the block three times. On the fourth occasion, the officer got out and knocked on the her driver-side window. "Who does the car belong to?" he asked. Kimmie said that the car belonged to her, but the officer insisted it had been stolen. The officer questioned them both, and refused to allow her friend to leave the scene and go inside his house. Finally, after Kimmie persisted, the officer checked the car's tags, realized it was hers, and drove away.

"Our neighborhood has always stuck together so we've always hung out outside; on the porch, in the street. But we don't want the expected confrontation [with police], so now we just go home."

Tara's story: A pattern of disbelieving crime victims

Tara is a Raleigh resident and a long-time advocate for sexual assault victims, having staffed a survivors' support hotline for many years, and president of a coalition advocating for women's rights.

Her experience brought her face-to-face with the reality of how Raleigh Police have treated some sexual assault survivors she has known.

"One caller told me that RPD told her that since she had been drinking, she shouldn't report her rape." With 60 percent to 80 percent of sexual assault crimes going unreported, a department committed to protecting and serving all would go out of its way to support sexual assault victims who see through societal messages that devalue their voice.

"Another called the rape crisis hotline to say that an RPD officer asked her daughter to take a lie detector test when she reported her rape," she recalls. The use of lie detector tests on people reporting sexual assault discourages reporting, re-traumatizes a crime victim, and has been shown to yield inaccurate results. Beyond that, FBI data shows that 4 percent to 8 percent of rape claims are false -- the same percentage of false reporting for most other crimes.

"When discussing my work as an advocate for sexual violence survivors with an acquaintance who was an RPD officer, I was shocked when he told me he believed that 90 percent of rape claims are false. Is it any surprise so many victims don't report what happened to them? **We deserve better, including a way to meaningfully challenge those officers who did a huge disservice to the community by discouraging a survivor in any way.**"



TJ's story: Stopped-and-searched for "being in a high-crime neighborhood"

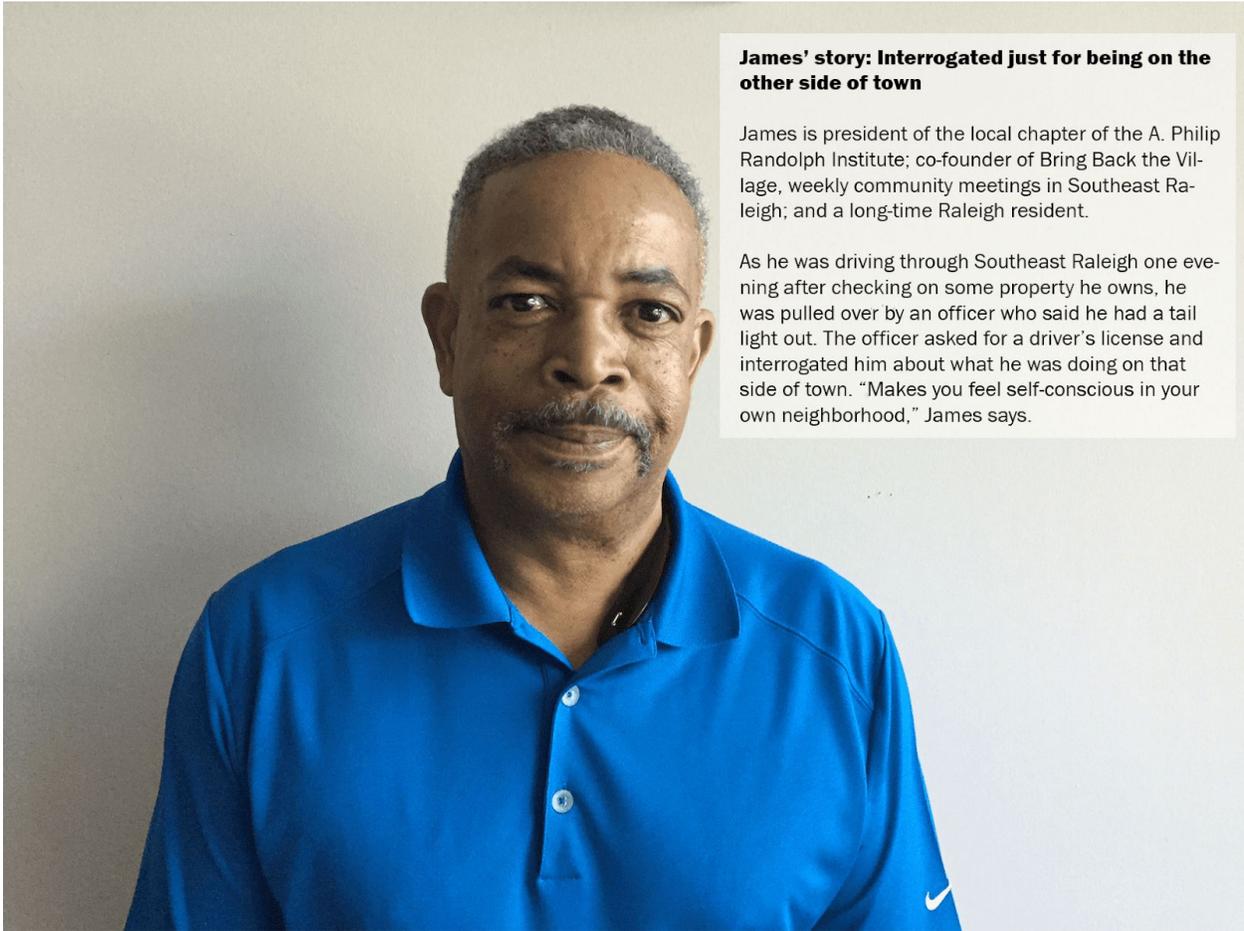
TJ is graphic artist, entrepreneur, and former professional security guard.

Early in 2015, TJ was driving on Martin Luther King Jr. Boulevard after assisting a friend on Bragg Street with a jump start. He was pulled over by a police officer who asked, "Where are you going, and where are you coming from?" TJ asked the officer to explain why he was being pulled over. The officer responded with more questions, then added: "Do you know you're in a high-crime area? Is it OK if we search your vehicle?"

"I felt like they were going to detain me if I didn't say yes to the search, so I did." The whole encounter lasted 35 minutes, and the search yielded nothing. "We're not going to charge you with anything," the officer said before driving off.

"At the time, I was a professional security guard so I actually had a strong relationship with RPD. Not anymore."





James' story: Interrogated just for being on the other side of town

James is president of the local chapter of the A. Philip Randolph Institute; co-founder of Bring Back the Village, weekly community meetings in Southeast Raleigh; and a long-time Raleigh resident.

As he was driving through Southeast Raleigh one evening after checking on some property he owns, he was pulled over by an officer who said he had a tail light out. The officer asked for a driver's license and interrogated him about what he was doing on that side of town. "Makes you feel self-conscious in your own neighborhood," James says.

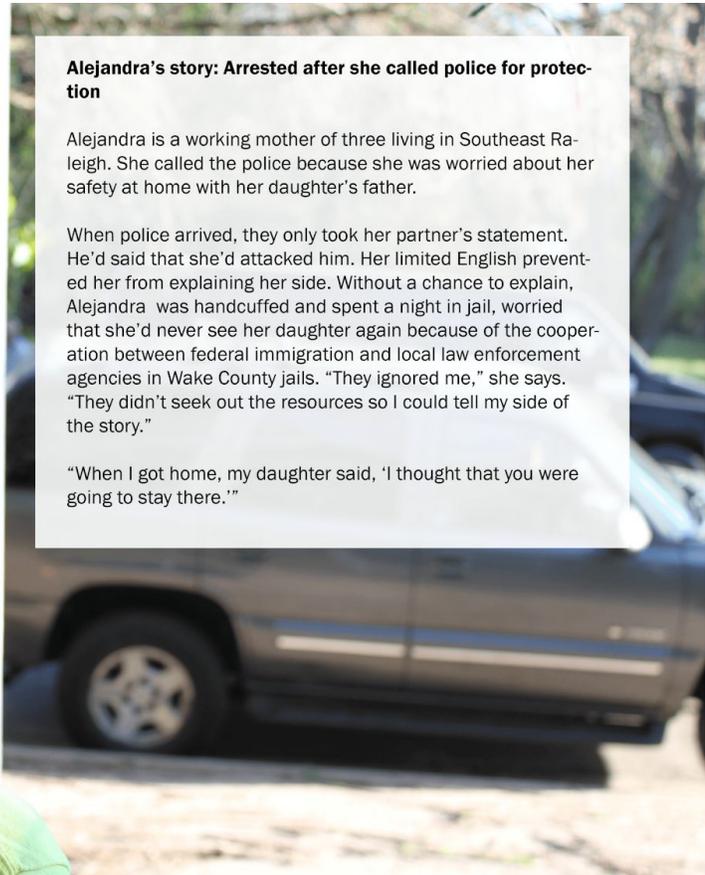


Alejandra's story: Arrested after she called police for protection

Alejandra is a working mother of three living in Southeast Raleigh. She called the police because she was worried about her safety at home with her daughter's father.

When police arrived, they only took her partner's statement. He'd said that she'd attacked him. Her limited English prevented her from explaining her side. Without a chance to explain, Alejandra was handcuffed and spent a night in jail, worried that she'd never see her daughter again because of the cooperation between federal immigration and local law enforcement agencies in Wake County jails. "They ignored me," she says. "They didn't seek out the resources so I could tell my side of the story."

"When I got home, my daughter said, 'I thought that you were going to stay there.'"



Hafiza's story: Broken breaks, an encounter with police, and months of financial consequence

Hafiza is a Raleigh resident and the proud mother of a 4-year-old daughter. Her encounter with Raleigh Police would have a lifetime of consequences.

Hafiza's brakes were malfunctioning in November 2015 when she ran a red light at 10 mph. She was on her way back to the mechanic, a minute away, when a patrol car turned on its sirens behind her. Through her window, she motioned that she couldn't stop. But when she pulled the emergency brakes in the mechanic's lot and got out to explain, police quickly escalated. Hafiza was tackled to the ground, maced, slammed on the hood of another car, and frisked twice by the same male officer, even though there were female officers available. All the while, Hafiza's 3-year-old daughter watched from their car.

Hafiza was charged with resisting a public officer and assaulting a government official and left with bruises on her arms and face that the police captured on camera phones. Hafiza's bond was set at \$10,000 that night. It took a significant amount of her mother's savings to get her released. **But by then, it was too late: the missed days of work while she was needlessly incarcerated caused her to lose her job.**

"I feel like I don't have a voice. A street that I've been driving down my whole adult life is now a triggering memory. And my daughter, she talks about how they're bad because she hasn't seen good. We deserve better."

Note: Wake County decided to drop Hafiza's resisting arrest case in September 2016, nearly a year later. Her formal complaint to the Raleigh Police Department's Internal Affairs division came back "not sustained" with no other explanation.



December 5, 2017

RE: Resolution for Justice in Policing

Dear Raleigh City Councilmember,

The Raleigh Police Accountability Community Taskforce has been working closely with members of the City Council, staff, and police department since March of 2016 when our coalition of community leaders and civil rights organizations first submitted our recommendations to build accountability, transparency, and equity in Raleigh policing.

Raleigh PACT believes that the first step toward accountability is a community oversight board where police directly answer to the people they serve--supplementing the department's system of internal review. As you know, to achieve this goal, we will first need to garner the support of the Wake County delegation to the General Assembly and then the Local Acts Committee. Repeatedly, our local delegation has made it clear that to move forward, they are looking to our City Council to demonstrate their commitment to this project for equity before they feel they have the support to move ahead.

To this end, we would like to present you with this proposal: a resolution affirming the City Council's support for a community oversight board with subpoena, investigative, and disciplinary power. The Council can declare their support by making this item a legislative priority on the City's 2019 legislative agenda and submitting a copy of the resolution to our County's delegation.

Please review the attached resolution and be in touch with our policy committee by January 12th with feedback and ideas for how to move forward. We are working to garner sufficient support from City Council members for this resolution to mark the second anniversary of Akiel Denkins' death on February 28, 2018.

Thank you for your commitment to equity, accountability, and transparency in Raleigh policing.

Best,

Brandon Douglas
Raleigh PACT Coordinating Committee Member

Barbara Smalley-McMahan
Raleigh PACT Coordinating Committee Member

PROPOSED RESOLUTION IN HONOR OF AKIEL DENKINS

A RESOLUTION INDICATING THE SUPPORT OF THE CITY COUNCIL FOR INCREASED POLICE ACCOUNTABILITY AND TRANSPARENCY THROUGH THE CREATION OF A POLICE COMMUNITY OVERSIGHT BOARD WITH INVESTIGATORY, SUBPOENA, AND DISCIPLINARY POWER.

WHEREAS, the City of Raleigh recognizes that transparency, equity, and accountability in policing is needed to ensure positive relationships between community and police; and

WHEREAS, the City is committed to building a welcoming and neighborly atmosphere in our community, where all people, including black, brown, and poor, are welcomed, accepted and integrated; and

WHEREAS, the City is committed to fostering a welcoming environment for all individuals, regardless of race, ethnicity/place of origin, and religion to return to the community and be able to find gainful employment, and represent their community without harassment or judgement because of past mistakes and unjust patterns of biased policing; and

WHEREAS, black drivers are still 270 percent more likely to be stopped and searched than white drivers but are 10 percent less likely to have contraband in Raleigh; and

WHEREAS, the City's policies and priorities should promote full access to our City's services, including families who have suffered a great loss to use of force, loss of dignity, to infringement of civil rights, and dehumanization to the system of mass incarceration of people of color; and

WHEREAS, the City recognizes the need for an external review system to supplement the Raleigh Police Department's Internal Affairs division, encourage public trust, and hold police accountable by assessing whether they have violated their oath to protect and serve; and

WHEREAS, a community oversight board would demonstrate our commitment to transparency and community governance in holding police accountable in order to achieve public trust; and

WHEREAS, we hope to promote self-governance in all communities by encouraging everyone to take ownership of their safety, upholding the law in their neighborhoods, and eliminate police presence across the city.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF RALEIGH:

SECTION 1. Advocate for local authority to convene a community oversight board with subpoena, investigatory, and disciplinary power will be added to the City of Raleigh's legislative priorities for the 2019 legislative session.

SECTION 2. A copy of this resolution will be submitted to the offices of the Wake County General Assembly delegation.

SECTION 3. Designate the Human Relations Commission of the City of Raleigh to investigate and recommend to this City Council policies and practices to ensure equity, accountability, and transparency in Raleigh policing for all.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017**

H

1

HOUSE BILL 350

Short Title: Charlotte CRB/Issue Subpoena. (Local)

Sponsors: Representatives R. Moore and Autry (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

March 15, 2017

A BILL TO BE ENTITLED
AN ACT AUTHORIZING THE CHARLOTTE CITIZEN REVIEW BOARD TO SUBPOENA
WITNESSES AND COMPEL THE PRODUCTION OF EVIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 160A-168(c), as amended by Section 3 of S.L. 1997-305, reads as rewritten:

"(c) All information contained in a city employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and shall be open to inspection only in the following instances:

...
(8) In order to facilitate citizen review of the police disciplinary process, the city manager or the chief of police, or their designees, may release the disposition of disciplinary charges against a police officer and the facts relied upon in determining the disposition to the person alleged to have been aggrieved by the officer's actions or to that person's survivor and to members of the citizens' review board. Board members shall maintain as confidential all personnel information to which they gain access as a member of the Board. Each member of the Board shall execute and adhere to a Confidentiality Agreement that is satisfactory to the City. For purposes of this subdivision, the 'disposition of disciplinary charges' includes determinations that the charges are sustained, not sustained, unfounded, exonerated, classified as an information file, or classified as any other disciplinary disposition category subsequently adopted by the Charlotte-Mecklenburg Police Department. In the event that the citizens' review board hears an appeal of a police disciplinary case, the disposition of the case, as defined in this subdivision, as well as the facts and circumstances of the case, may be released by the city manager or the chief of police, or their designees, to any person whose presence is necessary to the appeals hearing as determined by the chief of police or his designee. In the conduct of evidentiary fact-finding proceedings, any of the following may subpoena witnesses and compel the production of evidence: (i) the chair; (ii) the vice-chair when acting in the absence of the chair; and (iii) a majority of the members of the Board. If a person fails or refuses to obey a subpoena issued pursuant to this subdivision, the Board may apply to the General Court of Justice, Superior Court Division, for an order requiring



1 that the subpoena be obeyed, and the court shall have jurisdiction to issue
2 the order after notice to all parties.
3 "
4 **SECTION 2.** This act applies to the City of Charlotte only.
5 **SECTION 3.** This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 165
Feb 22, 2017
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40103-MS-42 (02/01)

Short Title: Citizens Review Boards Established. (Public)

Sponsors: Representatives R. Moore and Quick (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE USE OF CITIZEN REVIEW BOARDS TO INVESTIGATE OR REVIEW ALLEGATIONS OF CERTAIN POLICE MISCONDUCT AND TO REQUIRE THAT CERTAIN TRAINING BE PROVIDED TO MEMBERS OF NEIGHBORHOOD CRIME WATCH PROGRAMS ESTABLISHED BY COUNTIES AND CITIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 10 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-212.3. Citizen review boards.

(a) Definitions. – The following definitions apply in this section:

- (1) Disciplinary action. – An oral or written reprimand, suspension, demotion, or termination.
- (2) Discriminatory profiling. – As defined in G.S. 15A-306.
- (3) Head. – As defined in G.S. 160A-288.
- (4) Law enforcement agency. – A county police department or sheriff's department. If a joint citizen review board is established under subsection (l) of this section, this term includes a city police department. This term does not include company police agencies certified by the Attorney General pursuant to Chapter 74E of the General Statutes, campus police agencies certified by the Attorney General pursuant to Chapter 74G of the General Statutes, or any special police agency created by the State.
- (5) Law enforcement officer. – Any employee of a law enforcement agency who is actively serving in a position with assigned primary duties and responsibilities for prevention and detection of crime or the general enforcement of the criminal laws of the State and who possesses the power of arrest by virtue of an oath administered under the authority of the State.
- (6) Misconduct. – Limited to excessive use of force, abuse of power, and discriminatory profiling.

(b) Creation. – A county may by ordinance establish a citizen review board, or may use an existing citizen review board, to investigate or review allegations of misconduct by law enforcement officers employed by a law enforcement agency located within the county that established the citizen review board. The ordinance shall specify at least all of the following:

- (1) The composition of the citizen review board.
- (2) The minimum qualifications to serve on the citizen review board.
- (3) The procedure for appointing persons to the citizen review board.
- (4) The duration of the terms of members on the citizen review board.



* D R H 4 0 1 0 3 - M S - 4 2 *

- 1 (5) The manner in which hearings of the citizen review board are to be held.
2 (c) Powers and Duties. – A citizen review board shall have the following powers and
3 duties:
4 (1) Receive and investigate complaints by members of the general public against
5 law enforcement officers that allege misconduct.
6 (2) Review an internal investigation and discipline of a law enforcement officer
7 who is alleged to have committed misconduct.
8 (3) Subpoena witnesses, administer oaths, and compel the production of evidence.
9 (4) Make findings and decisions on disciplinary action of a law enforcement officer
10 alleged to have committed misconduct.
11 (5) Recommend changes in policy to the board of county commissioners and the
12 head of the law enforcement agency within the county that established the
13 citizen review board.
14 (6) Exercise any other power deemed necessary by the governing body of the
15 county to the discharge of its duties.
16 (d) Notice and Opportunity to Be Heard. – When investigating a complaint or reviewing
17 an internal investigation and discipline of a law enforcement officer alleged to have committed
18 misconduct, the citizen review board shall provide the law enforcement officer with reasonable
19 notice and an opportunity to be heard. A law enforcement officer and any other person involved in
20 a hearing before the citizen review board may be represented by an attorney or attorneys at the
21 hearing.
22 (e) Subpoena Power. – If a person fails or refuses to obey a subpoena issued pursuant to
23 this section, the citizen review board may apply to the General Court of Justice located in the
24 county that established the citizen review board for an order requiring that its order be obeyed, and
25 the court shall have jurisdiction to issue these orders after notice to all proper parties. The court
26 shall authorize subpoenas under this section if the court determines the subpoenas are necessary
27 for the citizen review board to complete its investigation or review. No testimony of any witness
28 before the citizen review board pursuant to a subpoena issued in exercise of the power conferred
29 by this section may be used against that witness in any civil or criminal action. Subpoenas issued
30 under this section shall be enforceable by the court through contempt powers.
31 (f) Personnel Records. – Notwithstanding G.S. 153A-98, but subject to any federal law
32 restricting access, the head of the law enforcement agency that employs the law enforcement
33 officer alleged to have committed misconduct shall make available to the citizen review board the
34 personnel file of the law enforcement officer and any other material deemed necessary by the
35 governing body of the county for the citizen review board to complete its investigation or review.
36 The citizen review board shall maintain the confidentiality of any information provided to it under
37 this subsection.
38 (g) Findings and Decisions. – Unless otherwise declared confidential by State or federal
39 law, the findings and decisions of a citizen review board are public records. Notwithstanding
40 G.S. 153A-103 or any other State law to the contrary, any decision by a citizen review board as to
41 disciplinary action of a law enforcement officer found to have committed misconduct shall be
42 binding on the head of the law enforcement agency that employs the law enforcement officer or
43 the city or county that employs the law enforcement officer.
44 (h) Appeals. – A county that establishes a citizen review board under this section shall
45 establish an appeals process under which a law enforcement officer may appeal any decision by a
46 citizen review board as to disciplinary action of a law enforcement officer. An appeals process
47 established under this subsection shall provide the law enforcement officer with a reasonable
48 period of time to request an appeal, afford an opportunity for a hearing, and require the hearing
49 officer or body to expeditiously provide a written disposition. If the hearing officer or body
50 overturns the decision of the citizen review board, the law enforcement officer shall be entitled to
51 all relief necessary to make the law enforcement officer whole.

Marijuana Lowest-Level Law Enforcement Priority – Sample Policies

Fayetteville, Arkansas – Effective November 4, 2008

(A) Title. This chapter shall be known as the Lowest Law Enforcement and Prosecutorial Priority Policy Ordinance.

(B) Purpose. The purpose of this chapter is:

(1) to make investigations, citations, arrests, property seizures, and prosecutions for misdemeanor marijuana offenses, where marijuana was intended for adult personal use, the City of Fayetteville's lowest law enforcement and prosecutorial priority; and (2) to transmit notification of the enactment of this initiative to state and federal elected officials

who represent the City of Fayetteville.

(C) Findings.

(1) Decades of arresting millions of marijuana users have failed to control marijuana use or reduce its availability. (2) Otherwise law-abiding adults are being arrested and imprisoned for nonviolent marijuana

offenses, which is clogging courts and jails in Arkansas. (3) Marijuana arrests prosecuted as criminal offenses result in loss of important job and educational

opportunities. (4) In 2005 alone, over 402 marijuana arrests were booked by the City of Fayetteville. (5) Each year, Arkansas spends more than \$30 million of taxpayer money enforcing marijuana laws. (6) Law Enforcement resources would be better spent fighting serious and violent crimes. (7) Making adult marijuana offenses Fayetteville's lowest law enforcement priority will reduce the

City's spending on law enforcement and punishment.

(E) Lowest Law Enforcement Priority Policy

(1) Fayetteville law enforcement officers shall make law enforcement activity relating to marijuana offenses, where the marijuana was intended for adult personal use, their lowest law enforcement priority. Law enforcement activities relating to marijuana offenses include, but are not limited to, investigation, citation, arrest, seizure of property, or providing assistance to the prosecution of adult marijuana offenses.

(2) Fayetteville's prosecuting attorney shall make marijuana offenses, where the marijuana was intended for adult personal use, the lowest prosecutorial priority. (3) This lowest law enforcement priority policy shall not apply to driving under the influence.

Santa Barbara, California – Effective 2006

9.145.050 Lowest Law Enforcement Priority Policy

(1) Santa Barbara law enforcement officers shall make law enforcement activity relating to marijuana offenses, where the marijuana was intended for adult personal use, their lowest law enforcement priority. Law enforcement activities relating to marijuana offenses include, but are not limited to, investigation, citation, arrest, seizure of property, or providing assistance to the prosecution of adult marijuana offenses.

(2) This lowest law enforcement priority policy shall not apply to use of marijuana on public property or driving under the influence.

(3) The lowest law enforcement priority policy shall apply to cooperating with state or federal agents to arrest, cite, investigate, prosecute, or seize property from adults for marijuana offenses included in the lowest law enforcement priority policy.

(4) Santa Barbara law enforcement officers shall not accept or renew formal deputization or commissioning by a federal law enforcement agency if such deputization or commissioning will include investigating, citing, arresting, or seizing property from adults for marijuana offenses included in the lowest law enforcement priority policy.

(5) Santa Barbara shall not accept any federal funding that would be used to investigate, cite, arrest, prosecute, or seize property from adults for marijuana offenses included in the lowest law enforcement priority policy.

Santa Cruz, California – Effective 2006

9.84.050 Lowest Law Enforcement Priority Policy

(1) Santa Cruz law enforcement officers shall make law enforcement activity relating to adult marijuana offenses their lowest law enforcement priority. Law enforcement activities relating to adult marijuana offenses include, but are not limited to, investigation, citation, arrest, seizure of property, or providing assistance to the prosecution of adult marijuana offenses.

(2) This lowest law enforcement priority policy shall not apply to the following:

(a) distribution or sale of marijuana to minors; (b) distribution, sale, cultivation, or use of marijuana on public property; or (c) driving under the influence.

(3) This lowest law enforcement priority policy shall apply to cooperating with state or federal agents to arrest, cite, investigate, prosecute, or seize property from adults for marijuana offenses included in the lowest law enforcement priority policy.

(4) Santa Cruz law enforcement officers and other city employees shall not accept or renew formal deputization or commissioning by a federal law enforcement agency if such deputization or commissioning will include investigating, citing, arresting, or seizing property from adults for marijuana offenses included in the lowest law enforcement priority policy.

(5) The city of Santa Cruz shall not accept any federal funding that would be used to investigate, cite, arrest, prosecute, or seize property from adults for marijuana offenses.

Getting It Right: Building Effective Civilian Review Boards to Oversee Police

*Udi Ofer**

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I. INTRODUCTION

Americans’ scrutiny of policing practices peaks whenever high profile cases of police brutality capture the national attention. In the 1990s it was the beating of Rodney King and the killing of Amadou Diallo, and in the 2000s the shooting deaths of Sean Bell and Oscar Grant. Today, the police shooting of Michael Brown in Ferguson, Missouri, and subsequent shootings of unarmed Black men have sparked yet another reevaluation of police use of force and of police practices in communities of color.¹

* Executive Director of the American Civil Liberties Union (ACLU) of New Jersey. This Article is dedicated to all of the people who have worked to build police accountability across our nation. In particular, I would like to thank the staff and

The regimes currently in place to hold police officers accountable for wrongdoing have faced particular scrutiny, as frustrations have grown over their failures to hold police officers accountable for wrongdoing.² While there are many governmental agencies with the jurisdiction to oversee police departments—including local prosecutors, internal affairs bureaus, civilian review boards, and state attorneys general—there is a growing feeling that these institutions have too often failed when it comes to overseeing police departments.

An August 2014 poll conducted by *USA Today* and the Pew Research Center found that 65% of Americans believe that police departments nationwide do a poor or fair job of holding police officers accountable when misconduct occurs, compared with 30% who say they do an excellent or good job.³ A separate 2014 poll found that while a large majority of Americans (78%) have a favorable view of the

members of the ACLU of New Jersey, New York Civil Liberties Union, Newark Communities for Accountable Policing, Communities United for Police Reform, and all of the activists and community members who have worked tirelessly to build police accountability in Newark, New York City, and beyond. Working with community partners to create the New York City Police Department (NYPD) Inspector General's Office and the Civilian Complaint Review Board in Newark helped me form my vision of police accountability. A special thank you to my ACLU of New Jersey and Gibbons PC colleagues who worked to create Newark's Civilian Complaint Review Board, including Ari Rosmarin, Ed Barocas, Jasmine Crenshaw, Larry Lustberg, Ana Munoz, Alex Shalom, Allison Peltzman, and Rashawn Davis, as well as the movement's grassroots leaders, including Ingrid Hill, Rick Robinson, Emily Turonis, John Smith, Laquan Thomas, Milly Silva and Mary Cruz. I also want to thank Seton Hall Law Professor Linda Fisher and the students in her Civil Litigation Clinic—Natasha Beckford, Jessica Maxwell, Brian McDonough, and Dennise Mejia—who provided valuable research for this Article.

¹ While shootings of unarmed Black men are at the forefront of this current conversation, the spectrum of practices under review run the gamut of policing practices—from a reevaluation of all use of excessive force to stop-and-frisk practices and civil asset forfeiture. The current conversations also come in the context of a much broader one on mass incarceration and bipartisan momentum to fix the nation's broken criminal justice system.

² See, e.g., Ross Jones, *Many Civilian Review Groups Have Limited Power to Resolve Allegations of Police Misconduct*, SCRIPPS NEWS (Nov. 16, 2015), <http://www.wptv.com/news/national/many-civilian-review-groups-lack-the-power-to-resolve-allegations-of-police-misconduct> (reporting how strained police-community relations have put a new spotlight on ineffective civilian oversight of police); Matt Pearce, *Ferguson Plan for Police Oversight Board is Derided as 'Insulting'*, L.A. TIMES (Sept. 11, 2014, 6:17 PM), <http://www.latimes.com/nation/la-na-0911-ferguson-review-board-20140912-story.html> (citing residents and policing experts criticizing Ferguson citizens' review board as "weak" and "insulting").

³ Susan Page, *Poll: Whites and Blacks Question Police Accountability*, USA TODAY (Aug. 26, 2014, 4:42 AM), <http://www.usatoday.com/story/news/nation/2014/08/25/usa-today-pew-poll-police-tactics-military-equipment/14561633/> (discussing poll taken soon after the death of Michael Brown, which found that Americans, by a 2-1 margin, believe that police departments do not treat racial groups equally).

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GETTING IT RIGHT

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police, only 46% believe that police officers are held accountable for wrongdoing.⁴

How can it be that with so many accountability regimes in place, Americans still believe that the police oversight system is broken? The answer is that these institutions, which range tremendously in scope and power, have often times failed to adequately oversee local law enforcement agencies, and that many of these regimes were rigged to fail in the first place given their limited mandates and authorities. For example, my research has found that of the top fifty largest police departments in the nation, only six have civilian review boards with some form of disciplinary authority.⁵

There are at least three gaps that exist when it comes to holding police officers and their departments accountable for wrongdoing. First, and most importantly, there is a need to hold police officers accountable for the unjustified use of deadly force against civilians. Police officers are afforded extraordinary powers not only to deprive individuals of their liberties, but, in extreme circumstances, to deprive them of their lives. When these powers are abused, they lead to tragic consequences. Unfortunately, there are inconsistent and often times inadequate mechanisms in place to hold police officers accountable for these actions.

Second, there is the need to hold police officers accountable for day-to-day transgressions that normally go unaccounted for and lead to resentments growing in communities most impacted by such practices, mainly low-income communities of color. These police behaviors, which may include discourtesy, an illegal stop and/or search, or an offensive slur, may appear minor when compared to cases involving police shootings or use of force. But when these behaviors are compounded thousands of times a year, the impact can be severe.

⁴ Reason-Rupe Poll: April 2014 National Telephone Survey, REASON.COM (Apr. 3, 2014, 9:00 AM), <https://reason.com/poll/2014/04/03/april-2014-national-telephone-survey>. The same poll also found a split in Americans' views on whether police misconduct cases are increasing (41%) or have stayed about the same (48%).

⁵ See *infra* app.

Take, for example, stop-and-frisk practices,⁶ which in certain communities can take place thousands, if not tens of thousands of times a year, as have been documented in cities such as New York City,⁷ Newark,⁸ and Philadelphia.⁹ In these cities, innocent people have been

⁶ For an example of the impact of stop-and-frisk practices on individuals, see this description by Nicholas Peart about his numerous encounters with the NYPD: “These experiences changed the way I felt about the police. After the third incident I worried when police cars drove by; I was afraid I would be stopped and searched or that something worse would happen. I dress better if I go downtown. I don’t hang out with friends outside my neighborhood in Harlem as much as I used to. Essentially, I incorporated into my daily life the sense that I might find myself up against a wall or on the ground with an officer’s gun at my head. For a black man in his 20s like me, it’s just a fact of life in New York.” Nicholas K. Peart, *Why is the N.Y.P.D. After Me?*, N.Y. TIMES (Dec. 17, 2011), <http://www.nytimes.com/2011/12/18/opinion/sunday/young-black-and-frisked-by-the-nypd.html>.

⁷ See *Stop-and-Frisk Data*, N.Y. CIV. LIBERTIES UNION, <http://www.nyclu.org/content/stop-and-frisk-data> (last visited Apr. 14, 2016) (documenting stop-and-frisk practices from 2002–2015, including millions of stops of innocent people); Editorial, *Racial Discrimination in Stop-and-Frisk*, N.Y. TIMES (Aug. 12, 2013), <http://www.nytimes.com/2013/08/13/opinion/racial-discrimination-in-stop-and-frisk.html> (noting that of the 4.4 million stops between January 2004 and June 2012, “only 6% resulted in arrests and 6% resulted in summonses,” meaning that the vast majority of those stopped were not engaged in criminal behavior).

⁸ See Udi Ofer & Ari Rosmarin, *Stop-and-Frisk: A First Look, Six Months of Data on Stop-and-Frisk Practices in Newark*, AM. CIV. LIBERTIES UNION N.J. (Feb. 2014), https://www.aclu-nj.org/files/8113/9333/6064/2014_02_25_nwksnf.pdf (providing first-ever documentation of stop-and-frisk practices in Newark, which found that Newark Police officers use stop-and-frisk with great frequency, in a manner that leads to racial disparities, and that the vast majority of people stopped were not engaged in criminal behavior). From July to December 2013, police officers made ninety-one stops per 1000 Newark residents—nearly one person stopped for every ten residents—exceeding the rate in New York City of eight stops per 1000 residents over the same period in 2013. *Id.* at 5. Black Newarkers make up 52% of the population, but they represented 75% of all stops. *Id.* at 8. The analysis also found that of those stopped in Newark, 75% were innocent and walked away without receiving a summons or being arrested. *Id.* at 10. See also Dan Ivers, *Newark Stop-and-Frinks Fall Under Baraka, Though Blacks, ‘Innocents’ Still More Likely to be Targeted*, NJ.COM (Jan. 28, 2015, 2:43 PM), http://www.nj.com/essex/index.ssf/2015/01/newark_stop-and-frisks_fall_under_baraka_though_bl.html (including latest data available on stop-and-frisk in Newark, showing that in 2014, of the 17,726 stops the police department recorded, 11,903, or 67%, were African-American, 79% of people stopped were not arrested or ticketed for wrongdoing, and that Newark police were making more than seventy stops per 100,000 people, a rate more than thirty times higher than New York City’s rate); Monique O. Madan, *U.S. Inquiry Reports Bias by the Police in Newark*, N.Y. TIMES (July 22, 2014), <http://www.nytimes.com/2014/07/23/nyregion/inquiry-of-newark-police-cites-a-pattern-of-bias.html> (citing a three-year federal investigation finding that the Newark Police Department engaged in a pattern of unconstitutional stop-and-frisk practices, including that the vast majority of pedestrian stops were unjustified, and that Newark police officers stopped Blacks at a considerably higher rate than Whites and underreported the use of force by officers).

⁹ See *Philadelphia Police Continue to Stop Tens of Thousands Illegally*, AM. CIV.

stopped-and-frisked, and few have had the ability to seek redress. Most attorneys have little incentive to take an individual stop-and-frisk case, as there is little available in money damages. Prosecutors will not get involved unless the stop rises to a criminal violation of rights. A victim can file a complaint with a police department's internal affairs office, but few do so since they lack confidence in filing a complaint against the police with the police. And while some municipalities have a civilian review board to adjudicate these complaints, the vast majority serve only in an advisory role¹⁰ or are not even equipped to independently investigate complaints, as this Article explains in further detail. There is a clear need to hold police officers accountable for these behaviors before the problem becomes so widespread that it triggers a class action lawsuit or a United States Department of Justice investigation.

Third, there is a need for the establishment of agencies, or units within existing entities, charged with reviewing patterns in policing practices that may reveal broader problems. This responsibility often falls on an inspector general, a position that is part of good government practices overseeing large government entities, including law enforcement agencies such as the Federal Bureau of Investigations and the Department of Homeland Security. Yet relatively few police departments are monitored through an inspector general dedicated solely to them.¹¹ Large police departments should be overseen by an inspector general to review whether the problem of police misconduct

LIBERTIES UNION PA. (Feb. 25, 2015), <http://www.aclupa.org/news/2015/02/24/philadelphia-police-continue-stop-tens-thousands-illegally> (finding that “despite having almost four years to improve its stop and frisk practices, the [Philadelphia Police Department] continued to illegally stop and frisk tens of thousands of individuals”).

¹⁰ Take, for example, New York City's civilian review board. While it has wide authority to accept complaints and possesses subpoena authority to investigate allegations of wrongdoing, final disciplinary authority still lies with the Police Commissioner. New York City CCRB Rules, §§ 1-02(c), 1-45(a) (2013), http://www.nyc.gov/html/ccrb/downloads/pdf/ccrb_rules.pdf (“The findings and recommendations of the Board, and the basis thereof, regarding case investigations and administrative prosecutions shall be submitted to the Police Commissioner The Police Commissioner shall retain in all respects the authority and discretion to make final disciplinary determinations.”).

¹¹ There are exceptions. For example, New York City recently established an inspector general dedicated solely to reviewing NYPD practices (I helped draft the legislation creating the agency and helped shepherd it through the New York City Council). J. David Goodman, *City Council Votes to Increase Oversight of New York Police*, N.Y. TIMES (June 27, 2013), <http://www.nytimes.com/2013/06/27/nyregion/new-york-city-council-votes-to-increase-oversight-of-police-dept.html>. Numerous review boards have the authority to make recommendations regarding policy and practices, but do not appear to use that authority with regularity.

is an isolated one or part of a larger policy or set of practices emanating from police headquarters.

This Article focuses on creating a model of police accountability that fulfills the second and third gaps identified above.¹² This model is a variation of an old one, a civilian complaint review board,¹³ but avoids the pitfalls of previous review boards by bestowing it with the powers necessary to aggressively investigate police misconduct, to ensure that discipline sticks when wrongdoing is found to have occurred, and to keep an eye out for systemic problems within policing. The model that this Article proposes would be independent not only from the police department, but also from politics by having a fixed budget and a board membership that is majority nominated by civic and community organizations. Such a structure also ensures community voice and perspective in discipline and in reviewing police policies and practices. A variation of this proposed model is currently being attempted in Newark, New Jersey.¹⁴

Given the growing momentum to rein in police abuses, now is the time to think creatively on all three of the needs previously identified.

¹² As stated earlier, the need to hold police officers accountable for the unjustified use of deadly force is the most pressing priority.

¹³ This Article uses the terms “oversight board” and “review board” interchangeably.

¹⁴ On March 16, 2016, the Newark Municipal Council passed legislation creating one of the nation’s strongest police civilian review boards. David Porter, *Newark OKs Strong Police Review Board; Union Vows Fight*, AP (Mar. 16, 2016, 8:43 PM), <http://bigstory.ap.org/article/a4867d7361a24653ab5a3bc13e727d2a/newark-ok-strong-police-review-board-union-vows-fight>. This review board will have the power to investigate complaints of misconduct lodged by civilians against Newark police officers. It will be comprised of eleven civilian members: one will be appointed by the mayor, three by the Municipal Council, and seven nominated by community and civil rights organizations. The board will have subpoena authority to compel the production of documents and the testimony of witnesses and have the authority to make discipline stick when wrongdoing is found to have occurred. A pre-negotiated disciplinary matrix will decide the discipline doled out. In addition, the board will have inspector general powers to audit policies and practices. And it will have vast and unprecedented public reporting requirements, not only on its operations but also on policing practices in Newark, including arrests, summonses, stop-and-frisk, use of force, etc. The legislation creating the Newark civilian review board, however, does not guarantee a fixed income source, which weakens its independence and may prove to be a fatal flaw if future mayoral administrations decide to defund it. Advocates and community members fought for the inclusion of this provision but failed. *See generally* City of Newark, N.J., Ordinance Amending Title II, Chapter 2, Office of the Mayor and Agencies of the Revised General Ordinances of the City of Newark, New Jersey 2000, as Amended and Supplemented, by Creating and Establishing a Civilian Complaint Review Board 16-0276 (Mar. 16, 2016), <https://newark.legistar.com/LegislationDetail.aspx?ID=2573481&GUID=13232B4A-53F9-4E99-8440-8FE11FB761B2&Options=&Search=&FullText=1> [hereinafter Newark Ordinance].

The model proposed in this Article is just one solution towards the goal of providing an avenue to hold police officers accountable for wrongdoing that normally would go unaccounted for. Implementing this proposal will lead to a significant reshaping of policing practices while also giving civilians a meaningful voice in decisions over officer discipline. Such a rethinking of the disciplinary process will lead to changes in the relationships between community members and their police departments.

Some who read this proposal may have already lost faith in civilian complaint review boards, particularly as they have proliferated across the nation yet have failed in many circumstances to hold police officers accountable for wrongdoing. I share this frustration. It is important, however, to separate frustration over the current models from rejecting the idea of independent civilian oversight altogether. Many civilian review boards have failed across the nation because they were rigged to fail—they lacked adequate authority and resources to achieve their missions. What this Article proposes has been largely untried and is meant to remedy those very inadequacies that have led to a loss of faith in civilian review boards.

II. OVERVIEW OF CIVILIAN REVIEW BOARDS

The concept behind a civilian review board is a simple one: civilians and not police personnel should have the power to investigate and make findings on police officer wrongdoing. Having police officers police themselves presents obvious conflicts of interest, while having civilians conduct these investigations provides an external check on the police. The hope is that if civilians handle the investigatory process, it will be a fairer and more effective one than if the police were charged with policing themselves.¹⁵ Civilian oversight also furthers democratic principles by allowing civilians to have more control over their police departments.¹⁶

For purposes of this Article, I use the following definition of a civilian review board, a variation of a definition used by police accountability expert professor Sam Walker¹⁷: an agency staffed with

¹⁵ Joel Miller, *Civilian Oversight of Policing: Lessons from the Literature*, VERA INST. JUST. 2 (May 5–8, 2002), http://vera.org/sites/default/files/resources/downloads/Civilian_oversight.pdf [hereinafter Vera Institute].

¹⁶ *Id.* at 3.

¹⁷ Professor Walker's definition is: "an agency or procedure that involves participation by persons who are not sworn officers (citizens) in the review of citizen complaints against the police and/or other allegations of misconduct by police officers." Samuel Walker, *The History of the Citizen Oversight*, in CITIZEN OVERSIGHT OF LAW ENFORCEMENT AGENCIES 1, 2 (Justina Cintron Perino ed., 2006),

civilians, and not sworn officers, charged with investigating civilian complaints of misconduct by police officers.¹⁸ In my definition, I emphasize the investigative component of a civilian review board and therefore disqualify those boards that review the findings of internal police investigations.

A. History of Civilian Review Board

Civilian complaint review boards have existed since the 1940s. The first one, Washington D.C.'s Complaint Review Board, was established in 1948 in response to concerns about police brutality and followed lobbying by the Urban League and National Conference of Christians and Jews.¹⁹ The board was largely ineffective and disbanded in 1973, only to be reestablished in 1982 and further strengthened in 2001.²⁰ New York City established its first Civilian Complaint Review Board in 1953 in response to a United States Department of Justice investigation that found police brutality and a broken system unable to hold police officers accountable for misconduct; this board was dismantled in 1966 following intense lobbying by the police union.²¹

In the 1960s, the concept of civilian review of the police began to take hold as the civil rights movement challenged police brutality and

http://apps.americanbar.org/abastore/products/books/abstracts/5330089samplech_abs.pdf.

¹⁸ This Article has a narrower definition of civilian review than used historically by others. I do so purposefully. When the public calls for independent investigations of police misconduct, I believe they are calling for investigations to be conducted by civilians and in an agency that is independent from the police department. In contrast, some review boards, while separate from the police department, do not conduct their own investigations but rather review those internal investigations conducted by the police. For example, Boston's Community Ombudsman Oversight Panel is empowered to review Boston Police Department internal investigation cases appealed by complainants. Yet it has no subpoena authority, and is explicitly prohibited from interviewing witnesses or conducting its own independent investigations. See City of Bos., Mass., Exec. Order, Mayor Thomas M. Menino, Establishing a Community Ombudsman Oversight Panel and Complaint Mediation Program, City of Boston (Mar. 14, 2007), https://www.cityofboston.gov/images_documents/exec_order_tcm3-9873.pdf. Other boards, like the Citizens Advisory Board in Phoenix, do not even review internal police investigations but are only charged with helping to "[c]reate a climate of trust between the community and the Phoenix Police Department" and to "[p]rovide a forum where the Phoenix Police Department can actively listen actively" to the public." See City of Phoenix, *Citizen Advisory Boards*, CITY PHX., <https://www.phoenix.gov/police/neighborhood-resources/citizen-advisory-boards> (last visited Apr. 15, 2016). When the public calls for independent investigation of police misconduct, I do not believe they have either one of these options in mind.

¹⁹ Vera Institute, *supra* note 15, at 10.

²⁰ *Id.*

²¹ *Id.* at 14.

began to call for civilian oversight of the police. But, it was not until the 1970s, when public attitudes towards the police began to change,²² that civilian review boards began to be adopted across the nation. In 1973, Berkeley, California became the first city to establish a Police Review Commission with the independent authority to investigate complaints of police misconduct.²³ Since then, more than 100 civilian review boards have been established throughout the nation.²⁴

Today, there are four kinds of civilian oversight entities. The most active ones, which are the focus of this Article, investigate civilian allegations of police misconduct and either recommend discipline to the police chief or have some variation of authority to independently discipline police officers. A second type reviews the findings of internal investigations conducted by the police and make recommendations to the police chief on whether or not to follow the recommendations of those reviews. A third type allows civilians to appeal the findings of internal police investigations, with the review board reviewing the internal police process and making recommendations of its own findings to the police chief based on the internal police investigation. Finally, some civilian boards serve a limited auditor function, investigating the process by which police departments accept and investigate civilian complaints of misconduct.²⁵

B. *Civilian Review in the Nation's Top Fifty Police Departments*²⁶

A review of the nation's top fifty police departments²⁷ and their civilian review board structures demonstrates some of the deficiencies in these oversight systems, as well as the lack of any review boards to oversee many police departments. Collectively, these departments

²² Walker, *supra* note 17, at 7–8.

²³ *Id.* at 4.

²⁴ *Id.*

²⁵ See PETER FINN, U.S. DEP'T JUST., CITIZEN REVIEW OF POLICE: APPROACHES AND IMPLEMENTATION vii (Mar. 2001), <https://www.ncjrs.gov/pdffiles1/nij/184430.pdf>.

²⁶ Working with Seton Hall Law students at Professor Linda Fisher's Civil Litigation Clinic, we reviewed the composition of the civilian oversight agencies of the top fifty police departments in the nation. This included review of the civilian oversight agencies' legal authority, membership, scope of jurisdiction, investigatory and disciplinary powers, and budget. The students who worked on the project were Natasha Beckford, Jessica Maxwell, Brian McDonough, and Dennise Mejia. Research is on file with the author.

²⁷ The top fifty police departments were chosen according to the number of full-time sworn personnel in 2013 according to the Justice Department. Brian A. Reeves, *Local Police Departments, 2013: Personnel, Policies, and Practices*, U.S. DEP'T JUST. 14 tbl.2 (May 2015), <http://www.bjs.gov/content/pub/pdf/lpd13ppp.pdf>.

represent civilian populations of close to fifty-two million residents and police departments with close to 147,000 officers.

Of the top fifty largest police departments, twenty-six have no civilian review board as defined by this Article.²⁸ While some do include a form of civilian oversight, such as in Los Angeles,²⁹ most of these departments have no civilian oversight beyond the normal structure of city government. The departments without a civilian review board represent more than twenty-three million residents who do not have an avenue to file complaints against the police that will be adjudicated independently by civilians (outside of traditional avenues, such as civil litigation).

Of the remaining twenty-four departments, all but nine are overseen by a review board that is majority nominated and majority appointed by the mayor (or in combination with the head of the police), thus minimizing the independence of such boards.³⁰ For example, New York City's Civilian Complaint Review Board is comprised of thirteen members, but the mayor and police commissioner appoint eight of the thirteen members.³¹ The nine civilian review boards that are led by a majority of non-mayoral nominees are Dallas, Miami-Dade, Las Vegas, Detroit, Atlanta, Indianapolis, Miami, Newark, and Albuquerque. Detroit has a Police Commission led by eleven members, seven of whom are elected by the people of Detroit, a model that exists in no other review board among the top fifty police departments.³²

Subpoena authority appears to have become more common among the civilian review boards overseeing the nation's largest departments, with nineteen boards being empowered with subpoena authority, including the boards overseeing the nation's two largest

²⁸ See *infra* app.

²⁹ Los Angeles has a complicated civilian oversight model, but has no independent entity charged with investigating civilian complaints of police officer misconduct. The Police Commission is technically the head of the Los Angeles Police Department. The Commission hires and fires the police chief and can make final decisions on all departmental policies. But it cannot impose discipline. *The Function and Role of the Board of Police Commissioners*, L.A. POLICE DEP'T, http://www.lapdonline.org/police_commission/content_basic_view/900 (last visited Apr. 15, 2016). Then there is Los Angeles Inspector General who is empowered to conduct investigations, such as audit of internal affairs. It can accept civilian complaints, but will turn those over to the Police Department to investigate. See *Office of the Inspector General*, L.A. POLICE DEP'T, http://www.lapdonline.org/police_commission/content_basic_view/1076 (last visited Apr. 15, 2016).

³⁰ See *infra* app.

³¹ *Id.*

³² *Id.*

police departments, New York City and Chicago.³³ But there are some glaring exceptions. Houston, the fifth largest police department in the nation, has a police oversight board with no subpoena authority.³⁴ Baltimore's civilian review board also has no subpoena authority, despite overseeing the ninth largest police department in the nation.³⁵

On the other hand, some form of disciplinary authority remains relatively rare, with only six civilian review boards having it—Chicago, Washington, D.C., Detroit, Milwaukee, San Francisco, and Newark.³⁶ This is the most revealing finding of this analysis and at the core of the frustrations felt by the public on the deficiencies of current oversight models. For all of the structures and supposed independence of the review boards, eighteen of the twenty-four are subject to the whim of the police department when it comes to final decision-making on discipline.

Finally, nineteen review boards are explicitly authorized to review and make recommendations related to departmental policies and practices, although it is unclear how many of these boards actually exercise these authorities.³⁷ In the nation's largest police department, the New York City Police Department (NYPD), a newly formed Inspector General focuses solely on auditing NYPD policies and practices.³⁸ It is unclear, however, how many of the boards with explicit policy review authority actually utilize it.

Of the nation's fifty largest police departments, the only review board that has a leadership structure that is not majority nominated by the mayor and that is empowered with subpoena, disciplinary, and policy review authorities, is Detroit's. Newark's review board will also have these features once it is built.

III. KEY COMPONENTS OF EFFECTIVE CIVILIAN REVIEW

Based on my review of the existing civilian review board models as well as conversations with colleagues, advocates, and community members from across the nation who have all experienced these various models in their respective cities, I propose the following features as necessary to create an effective civilian review board. The proposed features are meant to address the weaknesses in current

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *See infra* app.

³⁷ *Id.*

³⁸ As mentioned earlier, I helped draft the legislation creating the NYPD Inspector General and pass it through the New York City Council.

models, including the lack of direct community input in the leadership structure, inadequate investigatory and discipline authorities, the lack of authority to audit and make recommendations for overall police policies and practices, the lack of stable and robust financial support, and the lack of transparency in policing practices.

A. Board Majority Nominated by Civic Organizations

The make-up of the leadership of the review board sets the tone for the entire operation of the board. While professional staff trained in investigative and fact-finding techniques will conduct most of the work of the board, board members are the ones who will make decisions to move forward with investigations and discipline.

This Article proposes a board composition model where the majority of the board is nominated by civic organizations that have an interest in the safety of the city and in the civil rights of community members, with the rest nominated by the mayor and lawmakers. This will ensure the independence of the board and its legitimacy in the eyes of city residents. Nominees to the board should have expertise in a relevant field in order to be appointed, such as a legal, civil rights, or law enforcement background.³⁹ The nominees should have a demonstrated commitment to the well-being of the city where they live, and a strong understanding of the importance of upholding civil rights and civil liberties in policing. They should also believe in a police department that operates in a transparent and accountable manner. No member of the board should be a current or former employee of the police department that the board oversees, and a majority of board members should not have a law enforcement background.

In Newark, the newly established civilian review board will be composed of eleven members, seven of whom will be nominated by civil rights, immigrants' rights, and community-based organizations.

³⁹ In my review of the civilian review models, I came across several that disqualified those with a criminal record from being appointed to the board. For example, in Austin, the Citizen Review Panel requires that panel members have no felony convictions or indictments. *Citizen Review Panel*, AUSTINTEXAS.GOV, <http://www.austintexas.gov/department/citizen-review-panel> (last visited Apr. 15, 2016). In Miami, the Civilian Investigative Panel disqualifies individuals with a felony conviction record. *Members*, CITY OF MIAMI CIVILIAN INVESTIGATIVE PANEL, <http://www.miamigov.com/cip/pages/Members/cipmembers.asp> (last visited Apr. 15, 2016). I strongly recommend against such prohibitions. A person's past convictions should not be the sole determinative factor of his or her ability to responsibly review complaints of officer misconduct; it should not be an automatic disqualification. Moreover, given the racial disparities associated with arrest and incarceration rates, disqualifying people based solely on their criminal records will have a disproportionate and unfair impact on communities of color.

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The nominees are presented to the mayor, who then appoints the board members subject to the advice and consent of the Municipal Council. The following organizations and entities have nominating authority: American Civil Liberties Union of New Jersey; National Association for the Advancement of Colored People (NAACP) of New Jersey; People's Organization for Progress; La Casa de Don Pedro; Ironbound Community Corporation; Newark Anti-Violence Coalition; and a representative of the clergy community.⁴⁰ The mayor is obligated to appoint Newark's Inspector General to the board, and the Municipal Council nominates three members to the board.⁴¹

In my review of the boards for the top fifty largest police departments, I could only find one example, in addition to the review board recently created in Newark, of a review board that empowers a civic organization with the authority to nominate civilian review board members. The Atlanta Citizen Review Board is led by eleven members. Four are appointed by civic organizations: Gate City Bar Association, Atlanta Bar Association, League of Women Voters, and Atlanta Business League.⁴² While not giving them direct authority, Baltimore has non-voting members on the Civilian Review Board, including representatives from the ACLU, NAACP, and the Fraternal Order of Police.⁴³

B. Broad Scope to Review Complaints

Since the very purpose of the civilian review board is to provide an avenue for individuals to seek redress for misconduct that would otherwise go unaddressed, the scope of complaints that the review board adjudicates must be broad. The range, at the very least, should include adjudication of cases involving excessive use of force, abuse of authority, unlawful arrest, unlawful stop, unlawful searches, discourtesy or disrespectful behavior, use of offensive language, theft, and discriminatory behavior.

Many of the misbehaviors that would fall under the jurisdiction of the board would otherwise go unaddressed if not for the review board. Years of such unaddressed misconduct have been a significant factor in the deterioration of police-community relations. While a wrongful

⁴⁰ Newark Ordinance, *supra* note 14, at Part I.2 (a).

⁴¹ *Id.*

⁴² *About Us*, ATLANTIC CITIZEN REVIEW BD., <http://acrbgov.org/about-us/> (last visited Apr. 15, 2016).

⁴³ *See Baltimore City Office of Civil Rights and Wage Enforcement: Board Members*, CITY OF BALT., <http://civilrights.baltimorecity.gov/civilian-review-board/commission> (last visited Apr. 15, 2016).

stop-and-frisk is nowhere as egregious as a police shooting, the fact is that the former offense is committed with much more frequency—in some cities tens of thousands of times a year—and with fewer people paying attention. A civilian review board that is performing its functions correctly will provide community members with the opportunity to seek redress for each and every one of these illegal stops.

C. Independent Investigatory Authority

A civilian complaint review board will be only as strong as its authority to conduct independent investigations, and at the heart of such authority must be the ability to subpoena witnesses and documents, including internal police disciplinary documents, medical records, surveillance footage, and other materials relevant to an investigation. Subpoena authority will also allow the board to order a person to testify before it.

Subpoena authority has become more common in the civilian review boards that oversee large police departments, but is still not standard practice even among large cities. The review of the civilian oversight systems of the top fifty police departments revealed that only nineteen have civilian review boards with subpoena authority.⁴⁴

Independent subpoena authority is particularly important given the historic difficulties of compelling police officers who have witnessed wrongdoing to testify against their fellow officers.⁴⁵ The unwritten rule, the “blue wall of silence,” sometimes even encourages police officers to refuse to cooperate in investigations.⁴⁶

⁴⁴ See *infra* app.

⁴⁵ See Radley Balko, *Why Cops Aren't Whistleblowers*, REASON.COM, <http://reason.com/archives/2011/01/25/why-cops-arent-whistleblowers> (last visited Apr. 15, 2016) (documenting examples of retaliation against police officers who try to expose or testify against police misconduct) (“It may be true that abusive cops are few and far between, as police organizations typically claim. The problem is that other cops rarely hold them accountable For all the concern about the ‘Stop Snitchin’ message within the hip-hop community, police have engaged in a far more impactful and pernicious Stop Snitchin’ campaign of their own. It’s called the Blue Wall of Silence.”).

⁴⁶ In 1970, New York City’s Commission to Investigate Alleged Police Corruption, also known as the Knapp Commission, documented this practice extensively. Police officer Frank Serpico testified about the so-called “Blue Curtain” where reporting on a fellow officer was considered betrayal. See *Report Says Police Corruption in 1971 Involved Well Over Half on the Force*, N.Y. TIMES, Dec. 28, 1972, at 22.

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D. Ensure Discipline Sticks

An independent investigation will be meaningful only if its findings then form the basis for deciding whether and to what extent to discipline an officer. Yet it is at this phase of the review process where even strong civilian review boards fail, such as New York City's, where the police commissioner has full discretion to ignore the board's fact-finding or to impose no discipline even when the board has found that wrongdoing occurred.⁴⁷ In 2012, for example, the NYPD imposed no discipline in more than 40% of cases recommended by the CCRB and followed the CCRB's recommendation in only 9.7% of cases.⁴⁸

Under this proposed model, once the civilian review board's professional staff completes its thorough investigation and the board substantiates an allegation of misconduct, the board's findings of fact will be binding on the head of the police department, who will then determine discipline based on those facts and guided by a pre-negotiated disciplinary matrix.⁴⁹ Such a matrix will determine the range of discipline options for the misbehavior and will ensure that

⁴⁷ In 2012, the NYPD followed the New York City Civilian Complaint Review Board's (CCRB's) recommendation in only 25 of 258 cases (9.7%). Officers received no discipline in 104 cases (40.3%). Specifically, the New York City CCRB received 5741 complaints, and 258 complaints against NYPD officers were substantiated. The CCRB recommended charges in 175 cases, command discipline in 70 cases, and instructions in 12 cases. Of the 175 cases in which the CCRB recommended an officer be charged, the NYPD sought charges only in seven. Officers received no discipline in seventy-six of these cases. Of the seventy cases that the CCRB recommended command discipline, in thirty-five cases the officer was only given instructions. Officers received no discipline in twenty-four such cases. Kathleen Horan & Noah Veltman, *Police Officers Rarely Disciplined by NYPD for Misconduct*, WNYC (Aug. 27, 2014), <http://www.wnyc.org/story/nypds-poor-track-record-meting-out-discipline-officer-misconduct/>.

Under the new city and CCRB leadership, the percentage of cases where the NYPD adopts the CCRB's recommendation has grown significantly. During the first half of 2015, the discipline rate increased to 91% for cases substantiated by the CCRB involving a penalty recommendation of command discipline or instructions. This was the highest rate since the creation of the present-day CCRB in 1993. Press Release, Civilian Complaint Rev. Board, NYC Civilian Complaint Rev. Board Issues 2015 Mid-Year Report: Complaints are Down, Substantiation are Increasing and Video Evidence is Increasingly Paramount to Investigations (Sept. 7, 2015), <http://www.nyc.gov/html/ccrb/downloads/pdf/news-2015-midyear-report-released.pdf>.

⁴⁸ In 2012, the New York City CCRB made recommendations in 258 cases, and the NYPD followed those recommendations in only 25 of the cases. Police officers received no discipline in 104 of the 258 cases, representing 40.3% of all cases where the CCRB made a recommendation. Horan & Veltman, *supra* note 47.

⁴⁹ A disciplinary matrix is a chart that lists all of the various offenses for which a police officer may be disciplined and then lists potential punishments for each offense, taking into consideration the police officer's past disciplinary record.

discipline will always take place.

The head of the police department makes the final decision on discipline but is bound by the independent factual investigation of the civilian review board and the range of punishment included in the pre-negotiated disciplinary matrix. This formula not only ensures discipline when the civilian review board finds that wrongdoing has occurred, but it also creates transparency and predictability in the process, allowing the public to know ahead of time what type of discipline will be faced for which type of misbehavior.

Narrow exceptions can be made for when the head of the police department may depart from the factual findings of the review board, but such exceptions must be carefully drawn and should only capture those situations where an obvious error had been made in the board's factual investigation. For example, the board established in Newark creates an exception for when a "clear error" was made in the civilian review board's investigation and defines clear error as: "[W]hen the CCRB's [Civilian Complaint Review Board's] findings of fact are based upon obvious and indisputable errors and cannot be supported by any reasonable interpretation of the evidence."⁵⁰ Therefore, under Newark's model, the police director will make the final decision on whether or not there is a clear error in the CCRB's findings of fact. If there is no clear error, then the board's findings of fact will determine the police director's punishment of the officer based on a disciplinary matrix.

E. Audit Policies and Practices

The authority of the oversight board must not be limited to investigating individual allegations of misconduct. It should also have the ability to review the underlying policies that may lead to individual rights violations. This will ensure that the review board will be able to expose potential problems that are bigger than any one individual act of misconduct and prevent future wrongdoing.

The board's auditing authority should be broad and include all civil rights and public safety concerns. For example, if the review board begins to receive a high number of stop-and-frisk complaints, it could be indicative of a policy or practice to set quotas on police officers to perform a certain number of stops per shift.⁵¹ Therefore, when the

⁵⁰ Newark Ordinance, *supra* note 14, at Part V.E. § 1-17(b).

⁵¹ See, e.g., Joseph Goldstein, *Stop-and-Frisk Trial Turns to Claim of Arrest Quotas*, N.Y. TIMES (Mar. 20, 2013), <http://www.nytimes.com/2013/03/21/nyregion/stop-and-frisk-trial-focuses-on-claim-of-arrest-quotas.html> (reporting on the testimony delivered by NYPD officer Adhyl Polanco on the "20 and 1" rule, where the NYPD leadership

civilian review board notices a pattern of many complaints, or a rise in the number of complaints involving a pedestrian or vehicular stop, it should charge its auditing unit with investigating whether there was a broader policy decision or unwritten practice that led to these actions by individual police officers.

Other examples of potential reviews include an audit of the impact of a “broken windows” policing philosophy⁵² on civil rights and civil liberties, racial disparities in the enforcement of low-level offenses, or problems with 911 call response times in certain neighborhoods.

By including an inspector general authority within a review board charged with accepting complaints of individual misconduct, the board will have a firm grasp of any developing trends.

Once the auditing unit of the board completes its investigation, it should have the authority to make formal recommendations of policy reforms to the mayor, head of the police department, and city council.⁵³ The findings and recommendations of the auditing unit

and police unions expected each officer to make twenty summonses and one arrest a month).

⁵² Broken windows policing was first introduced in a 1982 Atlantic article. George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC, <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/4465/> (last visited Apr. 15, 2016). The article argued that because community members care deeply about public order, the appearance of disorder breaks down community controls and leads to community members feeling less committed to their neighborhoods, thus allowing for the introduction of criminal elements into the community. Therefore, according to the theory, law enforcement agencies should focus on responding aggressively to any public offense that may appear disorderly, no matter how minor. Kelling and Wilson recognized that police officers responding aggressively to the appearance of public disorder and minor offenses (even those that are not criminal) raises Fourth Amendment and racial profiling concerns. They recognized that Black and Latino residents may be disproportionately targeted by these policies and practices, but ultimately they largely ignored these concerns. Broken windows policing has been widely criticized. See e.g., Benjamin Bowling, *The Rise and Fall of New York Murder: Zero Tolerance or Crack's Decline?*, 39 BRIT. J. CRIMINOLOGY 531, 531 (1999) (attributing the decrease in homicide rates in the 1990s to the decrease of the crack cocaine epidemic, which had begun before the implementation of broken windows policing); Bernard E. Harcourt, *Policing Disorder: Can We Reduce Serious Crime by Punishing Petty Offenses?*, BOS. REV., <http://bostonreview.net/archives/BR27.2/harcourt.html> (last visited Apr. 15, 2016) (originally published in Apr./May 2002 issue of Boston Review) (criticizing the lack of an adequate definition of disorder—suggesting that what proponents of broken windows policing might call disorder may be perceived entirely differently by another segment of the population and may actually mean strong community bonds (graffiti is one example)—and presenting alternative theories for the decline in crime in New York City).

⁵³ While the policy recommendations of the board will not be binding, they are an important mechanism to highlight deficiencies within the department and to drive a public conversation that would otherwise be ignored. A recommendation by the board can also legitimize concerns that had previously been raised by community

should always be published as a report to the public.

F. *Secure Funding*

For the oversight board to be free from political manipulation that could weaken it, its funding must be both secure and sufficiently robust. Otherwise, a hostile administration could deprive the board of its ability to perform its duties by simply cutting its funding.

To insulate the oversight board from cuts to funding due to politically unpopular decisions, the board's budget should be tied to a fixed percentage of the police department's non-capital budget. Thus, if the police department's operating budget increases due to the hiring of additional police officers, so will the review board's budget and staff, and the opposite will happen if the police department lays off officers.

The percentage of a police department's budget committed to the review board should be fixed by law. That percentage must be enough to cover the hiring of professional staff to run the board, including an executive director, investigators, attorneys to prosecute the complaints, and analysts to audit departmental policies and practices. The budget should also be enough to fund accessible office locations and hours, outreach, and public education materials.

In Newark's newly created Civilian Complaint Review Board, the board's budget is not fixed to the police department's budget, thus weakening its independence.

G. *Due Process Protections for Police Officers*

Police officers who are accused of wrongdoing must be fully protected from false accusations and must enjoy the full range of due process protections in all stages of the investigatory and disciplinary process, including the right to counsel and a hearing.

Prior to any discipline being imposed, a police officer must be able to contest the civilian allegations and the findings of investigators. Police officers must be allowed to access the evidence being used against them, provide testimony, and offer responses and defenses to the allegations of misconduct. If the review board substantiates a civilian's complaint, the police officer should have the right to appeal the substantiation or the discipline. Throughout the process, police officers should retain their rights as civil servants.

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H. Public Access/Reporting

For the review board to adequately serve the community, residents should be able to easily file complaints. This should include the filing of complaints online through the board's website, but also in-person and by e-mail, phone, or fax. Moreover, to allow for the in-person filing of complaints, the board's office should be located in a central location and remain open during hours that are accessible to people who work or study full-time. Thus the review board should be open during evening hours at least once a week and on a weekend at least once a month. The board should also hold monthly public meetings to report to community members on its activities, summarize its findings, and have an open session to allow residents to ask questions and raise concerns.

Finally, the board should publish quarterly reports on its website summarizing its activities. The reporting should include the number of complaints the board received, the types of complaints it received, the basic facts of the complaints (without releasing personally identifiable information), the disposition of those complaints, and any discipline issued. The board should also issue an annual report summarizing its work for the year and identifying any trends. Further, the board should work collaboratively with the police department to report basic data on policing practices, such as stop-and-frisk practices, searches, use of force, arrests, and summonses. This will further strengthen transparency and accountability.

Newark's board has broad, even unprecedented, reporting obligations. These obligations include quarterly reporting the following information on its website: (1) the number of complaints received, disaggregated by demographic information on the complainant; (2) the basic facts and the disposition of the complaints; (3) the number of stops made by police officers during the previous quarter, including data disaggregated by date, time, location, demographics of the person stopped, and reason and disposition of the stop; (4) the number of use of force incidents by the police, including data disaggregated by the demographics of the civilian, description of the force used, reason for the force, and whether any injuries resulted; (5) the number of arrests made by the police, including data disaggregated by date, time, location, demographics of the arrestee, the offense charged, and how the arrest came about; and finally, (6) the amount of money Newark expended in settlements or judgments to resolve claims filed against the police department and

the basic facts associated with those claims.⁵⁴ The board is also mandated to publish an annual report, compiling statistics and including any trends or areas of concern.⁵⁵

IV. CONCLUSION

Building an effective civilian review board is no easy task. It requires a groundswell of community support and a sophisticated understanding of the nuances of civilian oversight. It helps to have a willing mayor, city council (or at least a majority of the council), and police chief. And it takes money and time to get it right.

As a consequence, all too often even well-meaning policymakers and activists settle for less—a review board that has subpoena authority but no power to make discipline stick, or a board that has access to review internal police investigations but cannot conduct any of its own independent ones. Arguably, a weak civilian review board is worse than no civilian review board because it gives the illusion of independent accountability but actually provides little to no accountability. A weak civilian review board can lead to an increase in community resentment, as residents go to the board to seek redress yet end up with little.

It is my hope that this Article will provide a clearer roadmap for how to achieve an effective review board. Spending several years, even decades as with Newark, to get it right is more important than moving quickly and getting it wrong.

⁵⁴ Newark Ordinance, *supra* note 14, at Part V.F. § 1-21(a)–(b).

⁵⁵ *Id.* at Part V.F. § 1-21(c).

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APPENDIX OF CIVILIAN REVIEW BOARDS⁵⁶ IN FIFTY LARGEST POLICE DEPARTMENTS⁵⁷

Name of Department	Board Name and Composition	Subpoena Authority?	Discipline Authority?	Policy Review Authority?
New York City Police	Civilian Complaint Review Board: 13 Members (5 appointed by Mayor; 5 by City Council; 3 by Police Commissioner)	Yes	No	NYPD Inspector General
Chicago Police	Independent Police Review Authority: Mayor appoints chief civilian administrator with Council approval Police Review Board: 9 members appointed by Mayor with Council consent	Yes (IPRA)	Yes (PRB 3 person panel may overturn Police Superintendent's decision to not follow IPRA discipline recommendation)	Yes
Los Angeles Police	No Civilian Review Board*			
Philadelphia Police	Police Advisory Commission: 15 members appointed by Mayor	Yes	No	Yes

⁵⁶ A civilian review board is defined as an agency that is staffed by civilians, and not sworn officers, charged with investigating civilian complaints against the police.

⁵⁷ The police departments are listed in size order according to the number of full-time sworn personnel, with the largest police department listed first and the smallest police department (of the top fifty departments studied) listed last.

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Houston Police	Independent Police Oversight Board: 21 members appointed by Mayor and approved by Council	No	No	No
Washington D.C. Metropolitan Police	Office of Police Complaints: 5 nominated by Mayor (1 from police department) and confirmed by Council	Yes	Yes (if police chief rejects recommendation, OPC may overturn chief)	Yes
Dallas Police	Citizens Police Review Board: 15 members, 1 appointed by each Council Member	Yes	No	No
Phoenix Police	No Civilian Review Board*			
Baltimore Police	Civilian Review Board: 9 voting members from each police precinct (nominated by Mayor and confirmed by Council). Also 5 nonvoting members (Fraternal Order of Police, Vanguard Justice Society, Baltimore Police, ACLU of Maryland, and	No	No	No

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	NAACP of Baltimore)			
Miami-Dade Police	Civilian Investigative Panel: 13 members (9 appointed by City Commission; 3 by Mayor; 1 by Police)	Yes	No	Yes
Las Vegas Metropolitan Police	Citizen Review Board: 25 members (13 members appointed by Clark County Board of Commissioners; 12 by Las Vegas City Council Fiscal Affairs Committee)	Yes	No	Yes
Detroit Police	Detroit Police Commission: 11 members (7 elected by residents from each Police District; 4 appointed by Mayor and approved by Council)	Yes	Yes	Yes
Memphis Police	Citizen Law Enforcement Review Board: 9 members (8 appointed by Mayor and approved by Council; 1 Council Member)	No	No	No

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Suffolk County Police	No Civilian Review Board*			
Milwaukee Police	Fire and Police Commission: 7 members appointed by Mayor and confirmed by Council	Yes	Yes	Yes
San Antonio Police	No Civilian Review Board*			
Nassau County Police	No Civilian Review Board*			
San Francisco Police	Office of Citizen Complaints: Director appointed by Police Commission with approval by Mayor and Board of Supervisors Police Commission: 7 civilian members (4 nominated by Mayor (subject to Board of Supervisors approval) and 3 by Board of Supervisors)	Yes	Yes (Police Commission has right to hear appeals from Police Chief's disciplinary decisions and to issue discipline that is longer than a 10-day suspension)	Yes

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Boston Police	No Civilian Review Board*			
Honolulu Police	Honolulu Police Commission: 7 Members appointed by Mayor and confirmed by Council	No	No	Limited – May make recommendations on PD strategic plan
Atlanta Police	Atlanta Citizen Review Board: 11 members (1 appointed by Mayor; 1 by Council; 1 by Council President; 1 by each of the 4 Neighborhood Planning Units; 1 by Gate City Bar Association; 1 by Atlanta Bar Association; 1 by League of Women Voters; 1 by Atlanta Business League)	Yes	No	Yes
Columbus Police	No Civilian Review Board*			
Baltimore County Police	No Civilian Review Board*			
San Diego Police	No Civilian Review Board*			

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Charlotte-Mecklenburg Police	No Civilian Review Board*			
Austin Police	No Civilian Review Board*			
Prince George's County Police	County Citizen Complaint Oversight Panel: 7 members appointed by County Executive and confirmed by Council	Yes	No	Yes
Jacksonville Sheriff's Office	No Civilian Review Board*			
Indianapolis Metropolitan Police	Citizens Police Complaint Board: 12 members (9 civilian voting members (6 appointed by Council and 3 by Mayor); 3 non-voting police officers (1 appointed by Fraternal Order of Police, 1 by Mayor, and 1 by Council))	Yes	No	No
Fort Worth Police	No Civilian Review Board*			
	Civilian Police Review Board:	Yes	No	No

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Cleveland Police	7 members appointed by Mayor and approved by Council			
Denver Police	No Civilian Review Board*			
Kansas City Police	No Civilian Review Board*			
Fairfax County Police	No Civilian Review Board*			
Metropolitan Nashville Police	No Civilian Review Board*			
St. Louis Police	Civilian Oversight Board: 7 members nominated by Mayor from each city district and confirmed by Board of Aldermen	No	No	Yes
Seattle Police	No Civilian Review Board*			
New Orleans Police	No Civilian Review Board*			

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Louisville Police	No Civilian Review Board*			
Montgomery County Police	No Civilian Review Board*			
El Paso Police	No Civilian Review Board*			
Miami Police	Civilian Investigative Panel: 13 Members (9 appointed by City Commission; 3 by Mayor; 1 by Police Chief)	Yes	No	Yes
San Jose Police	No Civilian Review Board*			
Newark Police	Civilian Complaint Review Board: 11 Members (1 appointed by Mayor; 3 appointed by Municipal Council; 1 nominated by ACLU of New Jersey; 1 by NAACP NJ; 1 by People's Organization for Progress; 1 by La Casa de Don Pedro; 1 by Ironbound	Yes	Yes	Yes

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	Community Corporation; 1 by Newark Anti-Violence Coalition; 1 representative of clergy. All subject to Council approval)			
Cincinnati Police	Citizen Complaint Authority: 7 members appointed by Mayor and approved by Council	Yes	No	Yes
Albuquerque Police	Civilian Police Oversight Agency: 9 members appointed by Council	Yes	No	Yes
Dekalb County Police	No Civilian Review Board*			
Tampa Police	No Civilian Review Board*			
Portland Police	Independent Police Review and Citizen Review Committee: IPR Director appointed by Portland City Auditor, advised by 9-member Citizen Review Committee	Yes	No	Yes

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Tucson Police	No Civilian Review Board*
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* No civilian review board as defined by this Article: an agency staffed with civilians, and not sworn officers, charged with investigating civilian complaints of misconduct by police officers.



Frequently Asked Questions - Community Oversight Boards

Our police department has a community policing philosophy to close the gap, increase trust, and improve public safety. Why are these recommendations necessary?

We respect the department's good faith effort to implement a strong training and community policing program in Raleigh. However, the numbers and community member experiences show that our police department is engaging in the practice of singling people out because of their race, accent, or other instead of strong evidence of wrongdoing -- if that wasn't the case the data wouldn't show disproportionate numbers of stops-and-searches for communities that don't have significantly higher contraband rates or disproportionately higher marijuana arrest numbers for populations with statistically similar use statistics.

That's against our values, endangers young people, erodes community trust and ultimately, reduces public safety. The best intentions of the Chief and the entire department to build good relations do not negate the reality of people's lived experiences and the data.

Our recommendations create a system of accountability that allows us to challenge those practices when they happen to us or our loved ones and when we observe those patterns happening to entire groups of people.

Don't we have an Internal Affairs Division within the police department and the State Bureau of Investigations to conduct investigations of misconduct. Why do we need all these reforms?

The Internal Affairs Division is housed within the same police department that potentially violated someone's rights and their dignity. It is also staffed by former officers who only bring that perspective to the table. It's the police policing themselves. Internal Affairs investigations are also sealed to the public. There is an inherent conflict of interest when a department investigates itself. In a city of 439,000 people, the Internal Affairs division of RPD has fielded an average of 39 complaints per year (when looking at the last five years). We believe that these numbers are a reflection of a faulty accountability mechanism, not a department with a sterling record. Our discussions with community members who have experienced negative interactions with police show an apprehension to report complaints. On average, 38 percent of them have been "not sustained" while only 25 percent have been sustained. We firmly believe that true accountability can only exist through external review by well-trained community members.

As for the SBI, they only gets involved in extreme situations. We need to have a mechanism in place to account for the daily assaults on the dignity of people of color and other marginalized communities: disproportionate use of force, searches, aggressive questioning and more.

Community Oversight Boards in other cities have no power. Why would we waste our time creating something meaningless?

Power means the ability to investigate, subpoena, and discipline. It's true that Boards in other cities have little power but that doesn't have to be the case. Our city can set a nationwide standard like the city of Newark, NJ did in 2015 for creating a Community Oversight Board with meaningful oversight power. It'd be up to this Council to designate and advocate for the appropriate powers in partnership with the community.

What powers does a Community Oversight Board need to have in order to have real "teeth"?

We believe that a board without these features does not have the capacity to meaningfully hold police accountable:

1. Investigatory power: The board can conduct full investigations independent of whatever internal process the police department already has in place. This power requires adequate funding.
2. Disciplinary power: The board can determine disciplinary decisions that, barring a "clear error" in the board's investigation, must be carried out by the chief.
3. Personnel file access: The board can access officers' personnel files.
4. Subpoena power: The board can compel testimony and request documents from local law enforcement.

Does the Raleigh City Council have the authority to create a Community Oversight Board with the power to subpoena, investigate, and discipline police?

Investigatory and disciplinary powers are achievable by local ordinance. Due to state law protecting access to personnel files, our challenge will be creating a board with subpoena power and access to officer personnel records. This part requires action at the General Assembly before the City Council can act.

The Council's support of an external Community Oversight Board with meaningful authority would communicate that they want to work with community and state legislators toward a system where people's concerns would be justly investigated. They could do this by:

1. Adding the state law we need passed to the City of Raleigh's official legislative agenda for 2017.
2. Passing a resolution, or making a formal public statement, asserting the City's support for a board with the powers outlined above. A resolution like that would send a clear message to the Raleigh community and state legislators that our city wants the authority from the General Assembly to convene a Community Oversight Board with these powers.

Has any other NC city made a recommendation like this?

Yes! Most recently, the Office of the City Attorney of the City of Charlotte issued a memo specifically advising that the City advocate at the state level for a Community Review Board with the power to subpoena witnesses. The Charlotte City Council then voted unanimously to accept the recommendation. The Attorney's memo explained that such power would be useful in the board's "evidentiary fact-finding proceedings" in order to compel reluctant witnesses whose testimony may support either the complainant or Charlotte-Mecklenburg police's version of the facts. Details are available here: <http://bit.ly/cltcrbrec>.

For a full list of recommendations visit www.raleighpact.org

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After people requested that the Citizens Review Board have subpoena power, the City Council voted Thursday to ask the General Assembly to grant the board that ability. MARK HAMES - mhames@charlotteobserver.com

POLITICS & GOVERNMENT

City Council votes to ask legislators to give Citizens Review Board subpoena power

BY STEVE HARRISON
sharrison@charlotteobserver.com

January 26, 2017 06:43 PM

The Charlotte City Council voted unanimously Thursday to ask the General Assembly to give the Citizens Review Board subpoena power.

Council members took the vote during their three-day budget retreat in Raleigh.

The CRB was founded after three police shootings in 1997. It's designed to provide civilian oversight of the police department, but the Observer found in 2013 that in 79 cases the board had never ruled in favor of a citizen.

After that report, a city task force studied the board with community input and recommended changes, which were adopted by the City Council.

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Changes included: The board has access to the entire Internal Affairs investigative file in a case, instead of just a summary. The board can also question the officer against whom a complaint is lodged. The person appealing to the board can make a statement to the board and provide supporting information.

But council members hadn't backed giving the board subpoena power. After the Keith Scott protests in September, council members said they would review the board again.

Legislators have to grant the board subpoena power before it goes into effect.

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RALEIGH
PACT
POLICE ACCOUNTABILITY COMMUNITY TASKFORCE

Status of PACT

Recommendations for equity, accountability, & transparency in Raleigh policing

Engaged in

8

City & police
community
dialogues

Participated in

7

small group
discussions with
City staff & elected
officials

Answered

6

rapid response
situations

Presented

7

times in front of
City Council &
other City boards

Submitted

4

written memos of policy
recommendations &
legal research

Turned in

4

written requests with
1,692
community members'
signatures

Met with

4

sitting City Council
Members

Met with

4

executive level City
staff

1

Pass a resolution asserting the council's support for a **strong and representative Community Oversight Board**.



2

Amend the department's non-biased policing policy to include an **annual review of officers' racial bias data** and accounting for patterns of biased policing.



3

End the biased enforcement of marijuana policy by de-prioritizing marijuana enforcement.



4

End the bias in searches. Require written consent to searches for all searches and pat downs not based on probable cause. *City has updated forms but has not written their implementation into ordinance or department policy.*



5

Improve training. Ensure that all foot patrol officers and their supervisors are crisis intervention-trained. Increase the amount of de-escalation + communication training during basic training. *City has begun race equity training but hasn't shared curriculum.*



6

Implement a body-worn camera program that includes **detailed policies with consequences** for officers violating them and protects the public's privacy, right to access the footage and film the police.



WHEN WILL THE CITY OF RALEIGH'S CALL FOR DIALOGUE LEAD TO ACTION FOR JUSTICE IN POLICING?

Investigation

May: Starting members convene coalition

Aug: Draft policy recommendations

Nov: Submit questions to City Council voter guides + forums

2015

June-July: Phone banks, door knocking, forums to learn about policing in Raleigh

Sept-Oct: Gather feedback on policy recommendations

2016

Dec - Jan: Attend Chief's Face-to-Face meetings



Education

Feb: PACT contacts every Council Member to arrange a meeting

2016

Mar 10: PACT presents to the Human Relations Commission

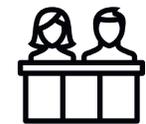
Mar 15: Meeting with Council Member Branch

April 5: PACT's first presentation to City Council

April 14: Submit memo about legal options for creating a community oversight board.



May 23: Assistant City Manager invites PACT to a small group dialogue



Mar 22: Meeting with Council Members Cox + Stephenson

April 12: Meeting with Council Member Gaylord

May 3: 2nd City Council presentation. City Manager promises response by 5/24

Meanwhile...

Feb 29: Akiel Denkins is killed by Raleigh Police

Oct: RPD launches body cam pilot with policies community has never seen

Mar 7: Families of Trindell Thomas + Maurice Harden demand apology from City

2016

2017

Aug 29: Jaqwan Julius Terry, 24, is killed by RPD. Terry is the 2nd sibling of the same family killed by RPD.

Nov 30: Chijioke Madueke is shot by RPD after "attacking" officers with a butter knife. Madueke survives.

Mar 10: Story of Charles Frails' degrading strip search and settlement is made public

Negotiation

May 25: 1st meeting with City Manager and Deputy Chief of Police

2016

June 8: 2nd meeting with executive City staff

June 22: 3rd meeting with executive City staff

July 5: PACT's 3rd address to City Council to request a public hearing on policing

July 27: 4th meeting with executive City staff

Aug 23: PACT press conference on City's inadequate commitment to change

Oct 4: PACT's 4th address to City Council calling for a public position on Community Oversight

Oct 25: Email campaign to City Council about body cam pilot policies



Nov: City + Mayor hold Community Conversations. PACT attends both



Nov: Launch of postcard campaign to City Council calling for a public stance on Community Oversight

Nov 17: Submit request that City make Community Oversight with subpoena power a state-level legislative priority



2017

Feb 7: Mayor says RPD Shaw substation will not move forward after students organize in opposition

Feb: City hosts district community conversations. PACT attends 3 of 5 sessions.

What now?

THE TIME FOR DIALOGUE IS PAST.
RALEIGH CITY COUNCIL
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COMMUNITY OVERSIGHT BOARD
WITH SUBPOENA POWER.

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HRC Recommendation

Management Response

Action Item

Current Status

Communications and Community Outreach

<p>HRC 1 We recommend the Durham Police Department regularly publicize their involvement in the community and neighborhoods via media outlets such as the local newspaper, Durham Police Department website, social media, etc.</p>	<p>Administration concurs with the recommendation and recognizes that the Police Department regularly promotes community and neighborhood involvement in the local media, the website and in social media. Administration is supportive of and will offer guidance in the hiring of a permanent Public Affairs Manager for the efforts described above.</p>	<p>Hiring of a Public Affairs Manager. Development of a communications plan that includes ongoing monitoring of public/community relations efforts.</p>	<p>11/11/15: Complete. Public Affairs Manager has completed the communications plan and it is being implemented.</p>
<p>HRC 2 We recommend City Council find ways to increase awareness and improve attendance at PAC meetings.</p>	<p>Administration recommends a continuation of the efforts of NIS to boost PAC attendance.</p>	<p>Provide quarterly reports to the City Manager on PAC meeting attendance beginning with the quarter that ends on 9/30/14.</p>	<p>2/13/15: Complete. Attendance information is being provided to the City Manager's Office on a quarterly basis.</p> <p>4/15/16: Beginning in May 2016, these reports will be available on the City Manager's Office website. The most recent report is available at this link: http://durhamnc.gov/DocumentCenter/View/20345</p>
<p>HRC 3 We recommend the Durham Police Department put more emphasis on promoting the Citizens Police Academy (CPA).</p>	<p>Outreach and efforts to improve diversity of and retain attendees should be enhanced, as evidenced by class sizes and demographic representation. Advertising and enhanced public relations efforts should be considered. Management recommends that evaluations be summarized and maintained, and that feedback be used to determine how to improve classes and reach more possible attendees. Once the curriculum is finalized, a brochure should be developed by the Department and distributed to help promote the CPA.</p>	<p>Finalize CPA curriculum; Develop Brochure; Translate brochure; distribute and post online. DPD will continue collecting and reviewing relations efforts for possible improvements.</p>	<p>5/1/18: Complete, with ongoing monitoring. CPA curriculum has been enhanced and advertising expanded. The new brochure (in both English and Spanish) is posted online. The 2017 Citizen Police Academy had 22 active participants. This class was diverse, including one black male, five black females, eight white males, six white females, and two Hispanic females. Recruitment for the 2018 class is underway.</p>
<p>HRC 4 We recommend the Durham Police Department recruit from the community of Durham to create a pipeline to employment with the Durham Police Department.</p>	<p>Administration affirms the spirit of the recommendation and endorses a continuing focus on recruiting Durham residents while maintaining a commitment to always seek the most qualified applicants to become Durham police officers.</p>	<p>Police Department provides report on BLET academy recruits and graduation stats regarding residency. Information will be provided after each academy is complete as part of Chief's quarterly report.</p>	<p>5/1/18: Ongoing. Reports on residency statistics for each academy class are posted on the City Manager's Office website. The most recent report (for Academy 47) is available at this link: http://durhamnc.gov/DocumentCenter/View/20811/Demographics for Durham Police BLET Academy 47 Recruits</p>

HRC Recommendation	Management Response	Action Item	Current Status
HRC 4 (continued)	(continued)	Evaluate options to incentivize sworn police officers to reside in Durham.	5/1/18: Ongoing. The adopted FY18 budget included funding for the second of three years of vehicle purchases to support a take-home vehicle program for officers residing in the City limits. Program will be monitored to determine impact on number of officers residing in the City. All 35 vehicles from the first round have been outfitted and deployed. City Council approved the second round of 35 vehicle purchases in October 2017; the vehicles are currently being outfitted for deployment in May 2018.
Durham Police Department Policies			
HRC 5 We recommend psychiatric evaluations for all officers and employees of the Durham Police Department are required once every three years.	Administration concurs with the Department's current practice as described in General Order 2005R-1 and finds no basis to support the recommendation of the HRC to require psychiatric evaluations for all officers and employees of the Department once every three years.	Annual report to City Council on sworn police officer residency statistics.	5/1/18: Ongoing. Annual reports on sworn police officer residency statistics are generated in February each year. The most recent report is available on the City's website at the link below. At the end of 2017, 43 percent of the sworn force resided within Durham city limits. http://durhamnc.gov/DocumentCenter/View/20176
HRC 6 & 7 We recommend that the vehicle camera remain operating at all times. Officers should not be allowed to disable the camera.	It appears that current practice satisfies the intent of these recommendations, though it falls short of the specific request to record and retain all video during a shift. Having reviewed peer cities and best practices, Administration concludes that the Police Department's current practice is sufficient to document all officer interactions with the public.	None	8/21/14: Complete, with ongoing monitoring.

HRC Recommendation	Management Response	Action Item	Current Status
HRC 6 & 7	We recommend digital copies of these recordings be maintained no less than 180 days.	Administration will continue to hold the Department accountable for ensuring that policies are followed and strictly enforced to ensure the current system achieves the desired goal. Administration further affirms the 180 day video retention policy.	None 8/21/14: No further action needed.
Police Stops and Consent Searches			
HRC 8	We recommend the Durham Police Department communicate to citizens why they are being stopped or detained. The reason should be documented by the Durham Police Department in a form that is reviewable by the citizen.	Administration recommends that the current practices outlined in General Order 4052 R-1 continue but that the General Order be reviewed to consider clarifying the intent of the Department and accompanied training by removing the word "normally" in each of the last two sentences of the section referenced herein.	Review General Order 4052 R-1 for changes to 2/13/15: Complete. General Order 4052 clarify the intent of the Department and the accompanying training and whether the word "normally" in each of the last two sentences should be removed. http://durhamnc.gov/DocumentCenter/View/96 21
HRC 9	We recommend that a written form be required for all consent searches. This form must be signed by the citizen/detainee and should be available in English and Spanish.	That all written consent to search forms be available in English and Spanish in every police vehicle that has exposure to requesting consent searches.	Develop bilingual version of written consent form. 10/1/14: Complete.
10 11	We recommend that Durham Police Department require all officers to document with an incident report any encounter that requires a search of the person or property. This report should include a reason for the stop and search.	That General Order 4004 R-2 be amended to clarify that every reasonable effort be made to ensure that both the in-car camera and microphone are working so as to document the request for consent and the provision or denial of that request, and that officers will be request for consent to employ the written consent to search form; however, the discretion will remain with the officer.	Amend General Order 4004 R-2 to require written documentation for consent searches of residences, businesses, vehicles, and electronic devices, and ensure every reasonable effort that in-car camera and microphones are activated and working during all traffic stops to document consent search of vehicles. 10/1/14: Complete. General Order 4004 (Warrantless Searches and Seizures) was amended on 10/1/14 as directed. The General Orders Manual is available for review at this link: http://durhamnc.gov/DocumentCenter/View/96 21

HRC Recommendation

Management Response

Action Item

Current Status

<p>11: We recommend supervisors and possibly professional standards review these reports for any irregularities.</p>	<p>That requests for consent to search by H.E.A.T. officers during traffic stops will be documented by audio or video recording or utilizing a signed consent form.</p>	<p>Amend the Electronic Traffic Stop Form submission software to track locations of stops and whether consent to search was requested, and then given or denied and by which method.</p>	<p>9/11/14: Complete. The electronic Traffic Stop Form submission software has been adjusted to track the stop location as well as whether consent to search was denied.</p>
<p>That Investigative encounters with citizens using a Field Contact or Intelligence Submission form to document investigative encounters be required.</p>	<p>Prepare a General Order requiring investigative encounters to be documented by Field Contact or Intelligence Submission. Implement by 10/1/14.</p>	<p>2/13/15: Complete. General Orders 4028 (Report Writing) and 4048 (Guidelines for Exchanging Intelligence Information) have been amended to direct officers to document investigative encounters via Field Contact Submission or an Intelligence Submission. The General Orders Manual is available for review at this link:</p>	
<p>That the Department by either General Order or command direction require written documentation of all investigative encounters.</p>	<p>Prepare or amend a General Order requiring written documentation of all investigative encounters. Implement by 10/1/14.</p>	<p>http://durhamnc.gov/DocumentCenter/View/9621</p>	
<p>That the Department complete the evaluation of the utilization of body cameras and provide recommendations to the City Manager in conjunction with the FY 2016 budget process.</p>	<p>That body camera technology be evaluated for all officers and a report and recommendation regarding this technology be provided to the City Manager by 2/1/15.</p>	<p>2/13/18: Complete. City Council approved the purchase of police body cameras on November 21, 2016. Cameras were implemented for all sworn units and all sworn levels of the department below the Assistant Chief level by October 2017. As of January 2018, 492 sworn officers had cameras and the department had recorded more than 130,000 videos.</p>	

HRC Recommendation	Management Response	Action Item	Current Status
<p>HRC 12 We recommend the Durham Police Department ensure that the traffic stop data is reviewed quarterly to track any irregularities. Should the data show unusual trends, it should be reported to the Chief of Police and reviewed by qualified independent analysts. Any reports should be made available to City Council for review within a reasonable time.</p>	<p>Administration concurs with the Police Department's actions to expand the fields of data being collected on traffic stops and the requirement that the data be analyzed on a semi-annual basis. The Administration also will direct that the Police Chief file a findings report to the City Manager within 60 days of this semi-annual review.</p>	<p>Expand the fields of data collected on traffic stops. Command staff review traffic stop data semi-annually and transmit to City Manager with results of review.</p>	<p>9/11/14: Complete.</p> <p>5/1/18: Ongoing. The traffic stop data report and Executive Summary for 2017 are available on the City Manager's website at the link below.</p> <p>http://durhamnc.gov/DocumentCenter/View/20909</p> <p>RTI also completed a Veil of Darkness traffic stop data review in 2016. Link to study results: http://durhamnc.gov/DocumentCenter/View/9594</p>
Training			
<p>HRC 13 We recommend that the Durham Police Department collaborate with a national independent training organization, approved by the City Manager and City Council, to create and implement a racial equity training program for Durham police officers.</p>	<p>Durham has already begun the implementation of Fair and Impartial Policing, a program offered by the Department of Criminology at the University of South Florida. The program is led by a nationally recognized expert on the topic of bias based policing.</p>	<p>Finalize the schedule for the Fair and Impartial Policing Training Sessions.</p>	<p>2/1/16: Complete, with ongoing monitoring. All sworn officers have completed the Fair and Impartial Policing training. Additionally, Fair and Impartial Policing training is now included in the BLEET curriculum for all incoming new recruits.</p>
<p>HRC 14 We recommend that racial equity, mental health, and crisis intervention training be made part of new recruit training.</p>	<p>Administration supports DPD's current racial equity and mental health training practices for new recruits. Administration also supports the current practices related to officer inclusion and selection for CIT.</p>	<p>None</p>	<p>9/11/14: Complete, with ongoing monitoring.</p>

HRC Recommendation	Management Response	Action Item	Current Status
<p>HRC 15 We recommend the Durham Police Department enhance their mental health and crisis intervention training for those officers who interact regularly with the community.</p>	<p>The need to have officers well trained in dealing with mental health and crisis intervention issues is undisputed. Given the widespread use of the current crisis intervention training model, Management believes the current curriculum is appropriate for use in the department. Administration will continue to support exposing as many officers as possible to this training, and will hold department leadership accountable for meeting or exceeding guidelines for the number of officers trained in this area. Administration further directs the DPD to continually review and implement new offerings in the area of mental health and crisis intervention training when these offerings are deemed to improve upon our current training program. Finally, management will endeavor to support all efforts to secure new resources to fund specialized personnel and/or programs dedicated to the care of residents in need of mental health or crisis intervention services.</p>		<p>8/21/14: Complete, with ongoing monitoring.</p>

HRC Recommendation	Management Response	Action Item	Current Status
<p>HRC 16 We recommend the Durham Police Department job performance evaluation include a review of stop/search data for irregularities in conduct and policy.</p>	<p>The City's Performance Management System and the Early Intervention System described in the Issues/Analysis section provide the basis for effectively setting comprehensive employee performance standards in results and behaviors that align with both organizational goals and objectives, and community expectations. The Police Department also has the foundation in place to build on a system that collects and uses data appropriately to better refine and discover irregular or undesirable behavior for referral to an Early Intervention System.</p> <p>It is recommended that the Early Intervention System's current behavioral alert indicators and mandatory referral activities be reviewed to insure alerts and supervisory follow-up are sufficient and effective. As a strategy to improve effectiveness, the department should consider the use of "rates" of policing activities compared with other officers similarly assigned. The Police Department should carefully determine thresholds for alerts and intervention in the context of organizational priorities.</p>	<p>Review the Police Department's early intervention system's (Professional Excellence Program) behavioral alert indicators and current mandatory referral activities for sufficiency and effectiveness, and include documentation that a review of stop/search data has been included by 12/31/14 for the 2015 calendar year.</p> <p>Submit a copy of this evaluation to the City Manager by December 31, 2014 that documents the review and describes the methodology to be used to set the threshold for alert and intervention regarding stop/searches, and how the data generated will be used by supervisors and department management in quarterly coaching sessions and annual performance reviews.</p>	<p>7/1/16: Complete. The annual review of the Professional Excellence Program is done each calendar year and is posted on the City Manager's Office website at the link below: http://durhamnc.gov/DocumentCenter/View/20177</p> <p>2/12/15: Complete. General Order 1050 Professional Excellence Program has been amended and published effective 2/18/15. The General Orders Manual is available for review at this link: http://durhamnc.gov/DocumentCenter/View/9671</p>
	<p>It is not recommended that a job performance standard isolating the activity of "stop/searches" be added to the employee performance evaluation form since stop/search activity is just one activity of policing and varies depending on factors such as assignments, shifts, and districts. The job result that would incorporate behavior regarding stop/searches would be the overall standard of "Adherence to established City of Durham Police Department Rules, regulations, policies and procedures."</p>	<p>None</p>	

HRC Recommendation	Management Response	Action Item	Current Status
<p>HRC 17 We recommend a yearly training needs analysis in order to make any adjustments necessary to meet the needs of the community.</p>	<p>A review of the Department's procedures for evaluating training needs and incorporating new training topics into the curriculum seems to demonstrate that the Department is meeting or exceeding the objective called for in the HRC recommendation. Administration recommends that interested groups or individuals should contact the Durham Police Department's training division if they wish to learn more about current offerings or suggest topics for training that should be enhanced. Administration will always support maximum transparency regarding the subjects and frequency in which our staff are being trained.</p>	<p>None</p>	<p>8/21/14: Complete, with ongoing monitoring.</p>
Marijuana Arrests			
<p>HRC 18 We recommend the City of Durham reach out to municipalities, such as the City of Seattle, WA, to make inquiries about their initiatives regarding making marijuana arrest a low priority.</p>	<p>That the Police Department complete a thorough review of the misdemeanor marijuana arrests for the period 1/1/13-7/1/14 to determine the existence of patterns or other information that explain the racial disparity in arrests over that period and report the findings of this review to the City Administration no later than 1/1/15.</p>	<p>Review misdemeanor marijuana arrests for the period 1/1/13-6/30/14 to determine the existence of patterns or other information explaining racial disparities. Report is due 1/1/15, with an interim status report of the review provided to the City Manager by 11/1/14.</p>	<p>2/19/15: Complete. These reviews were completed and are available for public review on the City Manager's Office website. Ongoing annual reviews of marijuana arrests are also conducted. These reports are all available at this link under "Marijuana Arrest Data": http://durhamnc.gov/291/Human-Relations-Civilian-Police-Review-B</p>
<p>HRC 19 We recommend the City of Durham review the data and recommend whether to implement a similar initiative to the City Council.</p>	<p>That the Police Department institute a policy to require an annual review of misdemeanor marijuana arrests for unexplained disparities.</p>	<p>That a General Order be established providing for an annual review of misdemeanor marijuana arrests for unexplained disparities and reported to the City Manager no later than April 1 of the subsequent year.</p>	<p>2/19/15: Complete. General Order 1052 (Annual Misdemeanor Marijuana Report) was published on 11/3/14. The General Orders Manual is available for review at this link: http://durhamnc.gov/DocumentCenter/View/9671</p>

HRC Recommendation	Management Response	Action Item	Current Status	
HRC (continued) 19	<p>That the City Council ask the Chief District Court Judge, Durham District Attorney, Durham County Sheriff, and the Durham Police Chief (through the City Manager), and others as deemed appropriate, to convene a discussion and make recommendations on programs and practices that reduce the criminal and financial impact on persons charged and/or convicted of misdemeanor marijuana possession, including expanded diversion and treatment programs and report said findings to the City Council and the County Commission through the Durham Crime Cabinet.</p>	<p>That the City Council ask the Chief District Court Judge, Durham District Attorney, Durham County Sheriff, and the Durham Police Chief (through the City Manager), and others as deemed appropriate, to convene a discussion and make recommendations on programs and practices that reduce the criminal and financial impact on persons charged and/or convicted of misdemeanor marijuana possession, including expanded diversion and treatment programs and report said findings to the City Council and the County Commission through the Durham Crime Cabinet.</p>	<p>5/1/18: Complete. A misdemeanor diversion program for ages 16-21 (including misdemeanor marijuana) was implemented 10/1/15.</p> <p>Since the program's start, 178 individuals have been referred to the Adult Misdemeanor Diversion Program (67% referred by the Durham Police Department). Of these, 153 have successfully completed the program and 25 are still enrolled. Just over 23% of these cases involved marijuana possession and 12% involved drug paraphernalia possession. Of those who graduated at least one year ago, 89% have no further criminal record. The program has also provided 126 referrals to wrap-around services for participants.</p>	
Civilian Police Review Board				
HRC 20	<p>We recommend that City Council move to an alternate model where the complaints themselves, rather than the Internal Affairs review process, undergo investigation by the Citizens Police Review Board.</p>	<p>Management recommends that initial complaints continue to be investigated by the Police Department. In the case of all City Departments, Department Directors or their designees are instructed to seek resolution on complaints before pursuing alternate means. The Police Department is expected to adhere to the same practice.</p>	<p>Discuss Police-Community Relations during 9/24/14 Civilian Police Review Board meeting.</p>	<p>10/29/14: Complete.</p>

HRC Recommendation	Management Response	Action Item	Current Status
<p>HRC 21 We recommend City Council annually brings in a representative from The National Association for Civilian Oversight of Law Enforcement (NACOLE) to provide best practices training for the Citizens Police Review Board.</p>	<p>Obtain membership with NACOLE</p> <p>Identify trainings/technical assistance for CPRB members</p>	<p>Contact NACOLE to identify current peer city memberships.</p> <p>Process payment for NACOLE membership</p> <p>Contact NACOLE about upcoming trainings/technical assistance for CPRB members.</p> <p>Share training opportunities with CPRB during 9/24/14 Board meeting.</p>	<p>10/29/14: Complete.</p> <p>10/29/14: Complete.</p>
<p>HRC 22 We recommend City Council have oversight of the Citizens Police Review Board, including appointment of Citizens Police Review Board members. City Council should designate a staff attorney to advise the Citizens Police Review Board.</p>	<p>The Administration recommends that the procedures for selecting appointees to the Civilian Police Review Board be revised to provide for the Mayor and City Council to confirm the City Manager's selections for appointment.</p>	<p>That the procedures for selecting appointees to the Civilian Police Review Board be revised to provide for the Mayor and City Council to confirm the City Manager's selections for appointment.</p>	<p>2/13/15: Complete. Revisions to the CPRB Procedure Manual adopted by City Council on 1/17/14. Link to Procedure Manual: http://durhamnc.gov/DocumentCenter/Home/View/956</p>
<p>HRC 23 We recommend some members of the Citizens Police Review Board be appointed and selected through the PAC organizations that closely follow police procedures. By changing the make-up of the Citizens Police Review Board to require PAC district representation, we can ensure all geographical areas within the City of Durham are represented.</p>	<p>The Administration recommends that the City Clerk's Office notify PAC co-facilitators in conjunction with advertising vacancies on the Civilian Police Review Board, but the Board not be required to include members from each PAC nor that PAC-affiliated applicants receive deferential consideration.</p>	<p>Notify PACs of existence of vacancies on CPRB.</p>	<p>8/21/14: Complete. General notification change to PACs has occurred and will happen as vacancies occur.</p>

HRC Recommendation	Management Response	Action Item	Current Status
HRC 24 We recommend the time allowed to appeal to the Citizens Police Review Board be extended to 30 working days after documented receipt of the Internal Affairs response. (CPRB 5)	Revise the relevant language in the Civilian Police Review Board Procedure Manual (Section 4.5) to extend the request for appeal from 14 calendar days to 30 business days (Monday - Friday). This change must be approved by the City Council. In addition to the Procedure Manual, any and all references to the 14 day appeal period would have to be revised as well (e.g., website and letters).	Amend Section 4.5 of the Civilian Police Review Board Procedure Manual. Work with DPD to revise the necessary document(s) to reflect the return receipt requirement.	2/13/15: Complete. Revisions to the CPRB Procedure Manual were adopted by City Council on 1/17/14. Link to Procedure Manual: http://durhamnc.gov/DocumentCenter/Home/View/956
HRC 25 We recommend the complainant have 60 days to gather information, documents, evidence, etc. to submit to the Citizens Police Review Board.	Allow Complainants 30 business days (Monday - Friday), instead of 14 calendar days, to file a Request for Hearing with the CPRB.	Create agenda item to amend Section 4.5 of the Civilian Police Review Board Procedure Manual.	2/13/15: Complete. Revisions to the CPRB Procedure Manual were adopted by City Council on 1/17/14. Link to Procedure Manual: http://durhamnc.gov/DocumentCenter/Home/View/956
HRC 26 We recommend the Citizens Police Review Board appeal complaint form be made available in electronic form and a link to this form should be placed on the City of Durham Human Relations Commission web page. (CPRB 1)	Develop an electronic form of the Request for Appeal Hearing Form.	Create and test the electronic form.	9/18/14: Complete. Request for Appeal Hearing Form can be found online and submitted by email. Link to form: http://durhamnc.gov/DocumentCenter/Home/View/958 9/18/14: Complete.
HRC 27 We recommend the Citizens Police Review Board report any findings of unethical behaviors towards citizens and if merited, disciplinary action be taken. The findings should be reported to the appropriate entity.	Include a link to the electronic Appeal Form on the Human Relations webpage.	Place the link to the electronic form on the Human Relations webpage by 9/30/14 None	9/18/14: Complete. 8/21/14: No further action required.

HRC Recommendation

Management Response

Action Item

Current Status

Complaints and Internal Affairs

<p>HRC 28 We recommend Complaint Forms be available to complete online, and allow for electronic submission with tracking and receipt of complaint form. (CPRB 1)</p>	<p>Institute a Complaint Form that can be completed on line and submitted electronically.</p>	<p>Create the electronic Complaint Form by 9/30/14. Test form by 9/30/14. Place a link to the electronic Complaint Form on DPD's website by 9/30/14.</p>	<p>9/18/14: Complete. DPD Complaint Form can be completed and subitted online. Link to form: http://durhamnc.gov/FormCenter/Police-Department-13/Citizen-Complaint-Form-82</p>
<p>HRC 28 (continued)</p>	<p>Continue instructing Complainants to submit their complaints to the Police Department. Revise the Complaint Form to allow the complainant to provide any and all contact information (telephone and email) where they would like to be reached for the purposes of completing a full investigation. Develop a Complaint Form in Spanish.</p>	<p>No further action required No further action required.</p>	<p>9/3/14: Complete.</p>
<p>HRC 29 We recommend the Durham Police Department institute a policy that provides citizens whose complaints have been sustained with a more timely and substantive response than the current practice.</p>	<p>Police Department should follow up with Complainants in writing when they anticipate the investigation will last longer than the time communicated in the initial letter that is sent to Complainants.</p>	<p>None</p>	<p>2/18/15: Complete.</p>

HRC Recommendation	Management Response	Action Item	Current Status
<p>HRC 30 We recommend a policy that ensures complaints of retaliation are properly investigated.</p>	<p>A thorough, fair and impartial complaint investigation process is a critical component of maintaining the credibility of the Police Department. Like other potential abuses, threats of retaliation must be guarded against. Protections for those who bring allegations against the Police Department are a critical component of ensuring the process remains credible and safe.</p>	<p>None</p>	<p>8/21/14: Complete.</p> <p>Internal Affairs Quarterly Reports are uploaded to the City Manager's Office website for public review.</p> <p>The January-March 2018 report will be available in late May 2018. Link to the 2017 Internal Affairs Quarterly Reports: http://durhamnc.gov/Archive.aspx?AMID=110</p> <p>The Durham Police Department's Professional Standards Division also produces an annual in-depth review of department investigations involving employees of the DPD. The 2017 report will be available in late May 2018.</p>
<p>HRC 31 We recommend the Citizens Police Review Board investigate whether there has been retaliation by Durham Police Department officers against citizens who have filed complaints.</p>	<p>The Administration does not recommend that the City Council broaden the powers and authority of the Civilian Police Review Board to investigate whether there has been retaliation by Durham Police Department officers against citizens who have filed complaints. As indicated in the response to HRC 30 the current procedures and practices outlined in General Order 1014 R-7, City ethics and personnel policies and procedures related to abuse of authority, and the to be revised policies and guidelines, for the Civilian Police Review Board, provide adequate avenues for investigation and review of alleged retaliation complaints from persons who have filed previous complaints.</p>	<p>None</p>	<p>8/21/14: No further action needed.</p> <p>Link to 2016 Annual Professional Standards http://durhamnc.gov/DocumentCenter/View/14735</p>

HRC Recommendation	Management Response	Action Item	Current Status
General Recommendations			
<p>HRC 32 We recommend the Durham Police Department strengthen accountability, both internal and external, regarding racial profiling and bias with the use of measurable benchmarks.</p>	<p>Management agrees that a more comprehensive evaluation of the data generated and reported regarding stops and searches is indicated in the Durham Police Department General Order 4074 "Biased Based Policing" should be reviewed and amended to incorporate the changes. These changes include a semi-annual review of data instead of annual, as well as procedures for utilizing the data collected at both the individual officer level, supervisory level, and executive level in individual and departmental performance management systems.</p>	None	10/30/14: Complete, with ongoing monitoring
<p>HRC 33 We recommend the City of Durham partner with the Human Relations Commission and outside organizations (Fostering Alternative Drug Enforcement, National Association for the Advancement of Colored People, Southern Coalition for Social Justice, etc.) to promote a comprehensive program to educate the citizens of their rights in regards to police stops, searches, and their avenues of redress.</p>	<p>The Administration will continue to support interest in community education regarding residents' rights. Suggested outside agencies are encouraged to promote positions and interpretations as their resources, priorities and interests permit.</p>	<p>A structured citizen engagement process with the Durham Police Department exists. It is facilitated by NIS through PACs and recurring community engagement activities such as direct outreach and neighborhood publications. This engagement can and will be used for topics of discussion as desired by the Department and citizens.</p>	9/11/14: Complete, with ongoing monitoring.
<p>HRC 34 We recommend the Durham Police Department, as all other governmental departments in the City of Durham complete a strategic plan, which includes community-policing initiatives.</p>	<p>It is recommended that the final approved Strategic Plan of the Police Department include priority community policing initiatives that align with priorities of the City's Strategic Plan goal of Safe and Secure Community. It is recommended that community policing initiatives identified in the plan be highlighted to increase understanding of how the specific initiatives will enhance the overall goal and culture of community policing in the Durham community.</p>	<p>City Manager to approve departmental strategic plan by 10/31/14.</p>	<p>2/15/15: Complete. The police department strategic plan was completed and approved in December 2014. The strategic plan can be viewed at this link: http://durhamnc.gov/documentcenter/view/973</p>

CPRB Recommendation

Management Response

Action Item

Current Status

Complaint Process

CPRB 1 The Complaint Form should be a fillable PDF/Word document available in both hard and soft copy and not require the complainant's occupation or work number. The Complaint Form should be more readily available. Decals should be placed on the back of patrol cars instructing citizens to contact Durham OneCall with concerns about police services. (HRC 26, 28)

See HRC 28

Institute a Complaint Form that can be completed online and submitted electronically by 9/30/14.

9/18/14: **Complete.** DPD Complaint Form can be completed and submitted online. Link to form:

Make Complaint Forms accessible from the City Manager's webpage by 9/30/14

<http://durhamnc.gov/FormCenter/Police-Department-13/Citizen-Complaint-Form-82>

Place hard copies of the Complaint Form at the Durham One Call desk in the first floor lobby of City Hall and the City Manager's Office by 9/30/14.

9/3/14: **Complete.**

Revise the Complaint Form to allow the complainant to provide any and all contact information (telephone and email) where they would like to be reached for the purposes of completing a full investigation.

CPRB 2 The most recent general orders, policies and procedures of the Police Department should be accessible online.

The City Manager has directed the Police Department to begin implementing this recommendation. Police Department staff have indicated some time is necessary to prepare the documents for posting given the size of the General Orders, but that the process has begun and will be monitored by the City Manager's Office.

Post General Orders to the Police Department's webpage by 11/30/14.

2/13/15: **Complete.** This item was completed prior to the projected date of 11/30/14. Link to General Orders Manual: <http://durhamnc.gov/DocumentCenter/View/9671>

CPRB Recommendation	Management Response	Action Item	Current Status
<p>CPRB 3 The Professional Standards Division should provide complainant with a letter confirming receipt of the complaint. The letter should explain the investigative process that the complaint will follow and when the complainant should expect to hear back from the Police Department. In addition, the letter should include contact information for the Captain of the Professional Standards Division or their designee.</p>	<p>The Police Department should follow up with Complainants if the investigation is going to last longer than the projected completion date.</p>	<p>The Police Department should provide contact information for the Captain of the Professional Standards Division, or his/her designee, in the second letter that is mailed to Complainants at the completion of the investigation.</p>	<p>No further action required. 9/11/14: Complete and ongoing.</p>
<p>CPRB 4 In the determination letter to the complainant by the Professional Standards Division, the letter should additionally provide some detail of the facts of the case, the six levels of discipline for a City of Durham employee and whether or not the officer was in fact disciplined. The letter should note that the specific discipline, with the exception of suspension, demotion or termination, cannot be disclosed due to the Personnel Privacy Act. (HRC 29)</p>	<p>The Police Department does not currently provide information regarding the six levels of discipline for City of Durham employees. The Police Department should provide that information in each Determination Letter.</p>	<p>Each determination letter should be revised to include the City of Durham's six levels of discipline and that all City employees are subject to this disciplinary process.</p>	<p>Revise letter(s) to Complainants to include the six levels of discipline and the City's disciplinary process.</p>
	<p>Each determination letter should be revised to include language stating that State law prohibits the City from disclosing personnel information except for suspensions, demotions, or terminations.</p>	<p>Revise letter(s) to Complainants to include requested language.</p>	

CPRB Recommendation	Management Response	Action Item	Current Status
<p>CPRB 5 The complainant should have 30 days from receipt of the determination letter from the Professional Standards Division of the Police Department to file an appeal with the Civilian Police Review Board. (HRC 24)</p>	<p>Revise the relevant language in the Civilian Police Review Board Procedure Manual (Section 4.5) to extend the request for appeal from 14 calendar days to 30 calendar days. This change must be approved by the City Council. In addition to the Procedure Manual, any and all references to the 14 day appeal period would have to be revised as well (e.g., website and letters).</p>	<p>Amend Section 4.5 of the Civilian Police Review Board Procedure Manual.</p>	<p>2/13/15: Complete. Revisions to the CPRB Procedure Manual were adopted by City Council on 1/17/14. Link to the Procedure Manual:</p>
<p>Determination Letters should be mailed with return receipt so the Clerk's Office, and CPRB, can determine whether Requests for Appeals have been submitted within 30 calendar days.</p>	<p>Work with DPD to revise the necessary document(s) to reflect the return receipt requirement.</p>	<p>http://durhamnc.gov/DocumentCenter/Home/View/956</p>	

CPRB Recommendation

Management Response

Action Item

Current Status

CPRB Activities

CPRB 6 The CPRB should receive quarterly Performance Reviews Reports from the Professional Standards Division of the Police Department.

The Police Department should submit quarterly reports to the Civilian Police Review Board and City Manager summarizing the number and types of investigations received during the previous quarter.

Work with DPD to develop quarterly reporting format.

2/14/15: **Complete, with ongoing monitoring.**

The most recent Internal Affairs Quarterly Report can be found on the City Manager's Office website at this link:

Reports should be submitted as follows:
January - March: April 30th
April – June: July 31st

<http://durhamnc.gov/291/Human-Relations-Civilian-Police-Review-B>

July – September: October 31st
October – December: January 31st
Reports should be submitted electronically and should include the following: (1) Date the alleged incident occurred (2) Type of the alleged violation (include applicable rules and/or general orders) (3) Outcome of the investigation (sustained, not sustained, exonerated, unfounded, or policy failure).

CPRB 7 The Annual Report of the CPRB should be posted on the City Manager's website.

To promote transparency and sharing of information related to the reviews conducted by the CPRB, the 2012 and 2013 Annual Reports have been placed on the City Manager's page in the publications section on the City website. CPRB Annual Reports are completed in September, and will be placed on the City Manager's webpage upon electronic receipt from the CPRB in the City Manager's Office.

No further action required.

CPRB Recommendation	Management Response	Action Item	Current Status
<p>CPRB 8 The CPRB will develop a brochure about the complaint process and CPRB.</p>	<p>Administration supports efforts to inform and educate the public about the complaint process and encourages the CPRB to work with the Office of Public Affairs to develop a brochure in English and Spanish. Upon completion, the brochures will be available at the City Manager's Office, and locations selected by the CPRB. It will be at the discretion of CPRB to ensure that the brochures are placed at the suggested locations.</p>	<p>Develop brochure and approve. Translate brochure. Determine distribution and posting needs.</p>	<p>11/1/15: Complete.</p>

<p>CPRB 9 The CPRB will host one community forum per year.</p>	<p>To ensure accountability and continuity of the CPRB annual community forum, the Civilian Police Review Board Procedure Manual should be amended to include the forum as an expectation of CPRB members. The amendment would have to be approved by the City Council.</p>	<p>Revise CPRB Procedure Manual to include annual community forum requirement - Manual requirements must be presented to City Council</p>	<p>5/1/18: Complete. The 2018 annual community forum was held on March 22, 2018. http://durhamnc.gov/DocumentCenter/View/955</p>
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<p>CPRB 10 [CPRB will be] available to present information on the complaint process to Partners Against Crime organizations and other interested community, civic and neighborhood groups.</p>	<p>To ensure accountability and continuity, the Civilian Police Review Board Procedure Manual should be amended to include a requirement to present to at least two community/civic/neighborhood groups per year.</p>	<p>Revise CPRB Procedure Manual to include requirements to present to at least two community groups per fiscal year. Manual requirements must be presented to City Council.</p>	<p>4/21/16: Complete. CPRB presentations are being made at meetings for all five PACs this fiscal year. The updated Procedure Manual is available for review at the link above.</p>
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