

**Improving and Implementing the Bias-Free Policing Policy  
Draft Recommendations by the Traffic Stop Committee  
September 3, 2020 with additions in Track Changes**

Data collected by Columbia Police Department officers and submitted to the Attorney General for the annual Vehicle Stops Report (VSR) document that Black drivers are stopped at a rate per estimated driver 4.63 times the rate for White drivers.

Columbia Black drivers say the data agree with their experience of racial profiling. In the [2018 Columbia city survey of residents](#), Black drivers reported stops by Columbia officers to be “illegitimate” at a rate 5 times the rate for White respondents.

Columbia officers often say they hold no animosity against Black drivers and are not targeting them. Columbia officials have suggested in the past that the stop disproportion is the result of officers responding to 911 tips—calls for service—but data have not been available for calls for service. Officials have also said the disproportion is the result of saturation patrols, in which officers conduct no-tolerance patrols in areas with high rates of accidents, violations or crime, but maps of stops do not seem to highlight specific areas.

Columbia needs a comprehensive policy to guide us out of this conundrum. In 2019, the CPD Racial Profiling Policy was replaced with a new Bias-Free Policing Policy, which was a significant improvement, but we still need to work together find a plan that officers recognize as giving them the resources to protect public safety without discriminating against anyone and that Black drivers, and other groups that might experience discrimination, welcome as being fair.

Chief Geoff Jones appointed a Traffic Stop Committee to advise him on the data he needs to identify discrimination, the best way to analyze the data, and changes in CPD policies needed to eliminate discrimination. Here are our recommendations on the Bias-Free Policing Policy.

As an example of a variable, Chief Geoff Jones said that as a new officer riding with his supervisor they had observed two cars with minor equipment violations. The supervisor asked him which one he would stop then advised him to stop the older vehicle because an older vehicle is more likely to be associated with other violations or more serious criminal activity.

The Chief said he now doubts the fairness of basing the decision to make a stop on the age of the vehicle because it unfairly affects individuals with lower incomes, and Black drivers are more likely to have low incomes.

The Bias-Free Policing Policy contains many of the elements the Traffic Stops Committee has found are necessary for fair and effective law enforcement. Full implementation of the policy, with a few improvements, would build trust and cooperation between Columbia officers and community members alienated by perceived discrimination.

The policy is easier to understand with an overview of how its pieces work together.

1. The policy has a two-part strategy. Officers get help with biases that might affect their performance. And they are required to make sure their decisions are based on facts. Bias is

recognized as the root problem, but discrimination is what officers are held accountable for; they must act on convincing facts and apply the same evidentiary standards to everyone.

2. It says officers can only make a decision based on an individual's race when they have convincing facts indicating criminal behavior, facts that are clearly independent of racial bias, and then race can only be used in limited situations, such as an individual's description.
3. Officers must document their facts so that supervisors can make sure they are adequate to eliminate the possibility of discrimination.
4. Part of the documentation is the check-off sheet required for the VSR. The check offs make the variables that go into an officer's decision to act easier to analyze. Rates can be computed and compared for a broad array of situations, especially if incident-based data is used. A high disproportion against a group in a situation flags possible discrimination.
5. If a high disproportion exists in any situation, CPD documents that officer decisions to act were based on adequate facts applied fairly to everyone. If CPD cannot document adequate facts, it must improve policies, training and supervision, and report to the public what it is doing to address discrimination.

Note that this strategy reverses the usual approach to biased or discriminatory policing, in which officers must be proven to have committed discrimination. Here, CPD accepts responsibility for proving that actions are based on convincing facts. An officer who has not cited adequate facts receives help to improve performance. In a case severe enough to warrant discipline, termination or prosecution, the officer would still have to be proven to have committed discrimination.

Below are the sections of 402, the Bias-Free Policing Policy (BFPP), discussion of the policy section by section, and committee recommendations.

## 402 BIAS-FREE POLICING

### 402.1 PURPOSE AND SCOPE

Biased policing undermines legitimate law enforcement efforts, alienates community members and fosters community distrust. The purpose of this policy is to reaffirm the Columbia Police Department's commitment to bias-free policing, clarify the circumstances in which personnel can consider race, ethnicity, national origin, gender, gender identity, sexual orientation, socioeconomic status, religion, disability, and/or age when carrying out duties, and establish appropriate controls to ensure that employees of the Columbia Police Department do not engage in biased policing.

#### **Discussion:**

This section makes a strong statement about the need to replace biased policing with bias-free policing, but the policy also needs to clearly lay out what biased policing is, how it will be identified, and the consequences for officers.

From this section, the policy seems to be getting at two aspects of bias that overlap, bias as an attitude and bias as discrimination. Bias is an attitude or tendency that can affect behavior but is not directly observable; officers can't be held accountable for what they're thinking. But when two individuals or two groups are treated differently officers can be held accountable for their actions.

The policy says its purpose is to make CPD bias-free, but this doesn't mean officers and other employees will be free of bias. Everyone has biases.

The second element of the purpose focuses on the decisions officers make when they observe all the variables in a situation—the variable factors they consider in deciding to make a stop or not, issue a citation or make an arrest, conduct a search and so on. Officers are allowed to consider groups identified by specified characteristics only in certain, limited circumstances. The main circumstance, the policy will say later, is when group is used in order to identify a specific individual.

The third element of the purpose is to “establish appropriate controls” to prevent biased policing. These controls will be the main body of the policy: the training, the standards for performance, the way supervisors will hold them accountable, and so on.

A weakness of 402.1 is that discrimination does not adequately cover all the aspects of bias that members of the public are concerned about and officers are likely to need support to avoid. The use of a racist insult could, for instance, be considered a form of discrimination; the officer chooses to use it only against one group, but it would make more sense to put racist remarks in a separate category of biased behavior.

#### **Recommendation:**

The changes this policy makes will require personnel to change the way they think and the procedures they have been taught to follow. Full implementation will not be immediate and will require a concerted effort by CPD command staff and officers, city officials and the public.

Clarification of statement of purpose would make the policy more effective. Bias involves inner, mental attitudes and it also involves discriminatory actions. The committee recommends this change:

The purpose of this policy is to reaffirm the Columbia Police Department's commitment to bias-free policing, to ensure that officers have the skills to resist the influences of explicit, implicit, systemic and other forms of bias, to clarify that personnel can consider specified characteristics when carrying out duties only when they have adequate facts to support their decisions independent of specified characteristics, and to establish appropriate controls to ensure that employees of the Columbia Police Department apply the same evidentiary standards to everyone.

## **402.2 DEFINITIONS**

**Biased Policing:** The inappropriate consideration of specified characteristics in carrying out duties.

**Specified Characteristics:** Race, ethnicity, national origin, gender, gender identity, sexual orientation, socio-economic status, religion, disability, and/or age when making law enforcement decisions.

#### **Discussion:**

Officers need to know what “inappropriate” means. The policy says in 402.5 that considering group characteristics is allowed only when an officer has “credible, timely intelligence.”

Bias is often thought of as involving animosity toward a group and acting in a way that expresses this animosity, but in law enforcement most instances of bias are not explicit. The incidents often involve situations in which it is impossible to prove race was a motivating factor unless the officer expresses animosity in some way.

So this policy adopts a different strategy. It starts by defining bias as consideration of specified characteristics of groups, such as race. Race may not be part of the decision-making process except in very limited ways, such as a physical description. Instead, the decision-making process must be based on “credible intelligence”—facts strong enough to make bias unlikely.

For instance, data might show Black drivers are stopped for speeding at a disproportionate rate so discrimination might be involved. But the data might also show the disproportion occurs only in incidents in which drivers exceed the speed limit by 20 mph. Officers are unlikely to be affected by bias when a significant threat to public safety is obvious. Systemic or organizational bias could still be involved. Officers might be assigned to patrol areas where they are more likely to observe Black drivers speeding, but if Black drivers are caught driving this fast, then the assignments can probably be justified by public complaints.

Officers and other personnel must record their facts so that supervisors can verify they were not distracted by stereotypes and so that the agency has the documentation to convince stakeholders that bias was not involved, or at least unlikely. And finally, the standard for acceptable facts must be the same for everyone. When the facts officers have recorded are reviewed, no disproportions should occur among groups unless they are clearly supported by factors independent of race or other group characteristic.

The strategy of this policy is to reverse the burden of proof so that the officers, command staff and other employees take responsibility for documenting that their actions are based on convincing facts--facts convincing enough to make bias irrelevant, facts based on standards applied equally to everyone.

In this context, this definition of bias makes sense. Bias will primarily be identified on the basis of whether the officer or other employee made the decision to act on facts that were clearly independent of specified characteristics.

But officers, command staff and other employees need to know the dangers of biases, the types of biases that can lead them to be distracted by group characteristics, how to reduce or control biases, and so on. So these biases need to be defined.

And because employees cannot be held accountable for an attitude, something just in their thoughts, they need to know what behaviors are prohibited. These might not need to be defined but they need to be included in training and supervision.

Notice that the policy applies to all “duties,” not just traffic stops. Use of force is a prime concern. Research by Dr. Joshua Correll has documented that participants in a [simulation](#) are more likely to shoot a Black subject holding a cellphone than a White subject holding a gun. Investigations, decisions about citations and so on are included. And it applies to the duties performed by upper-level officers, such as developing strategies for traffic patrols, making officer assignments, choosing equipment—everything necessary for law enforcement.

Notice that the specified group characteristics include gender identity, sexual orientation and socio-economic status. These characteristics are not always included in lists of protected groups but they are concerns in Columbia.

**Recommendations:**

If officers are to be held accountable for bias-free policing, expectations need to be spelled out clearly. Some details might be better left to other policies but basic concepts such as bias and discrimination need to be defined here.

Bias in the way officers make decisions to act based on the many variable facts that come to their attention is important and deserves to be defined and addressed, but other aspects of bias demand attention too.

The Traffic Committee recommends clarification of the definition of Biased Policing as:  
The consideration of specified characteristics in carrying out duties without the support of adequate intelligence.

The Traffic Committee also recommends these definitions be included in the policy or be included in training so that all stakeholders can share a common understanding of issues to be addressed:

Bias: a positive or negative attitude toward someone or something.

Explicit bias: a bias which someone is aware of and may affirm publicly.

Implicit bias: a bias which someone is not aware of but which can affect actions, sometimes in contradiction of expressed values.

Organizational or systemic bias:

Stereotype:

Racism:

Hate speech:

Racial profiling: In the recent past, law enforcement often defined racial profiling as making a stop based solely on race. If any minor violation had been observed, race was not the sole factor so racial profiling did not occur. Officers need a new definition to replace the old one. Racial profiling could be defined as targeting individuals based on race.

Disproportion: a comparison of group rates in data collected on traffic stops or other officer actions. The rate for stops and types of stops is number of stops per estimated number of drivers. The rate for post-stop action, such as writing citations, is action per stop. The rate for contraband found is contraband found per search. Other rates and disproportions can be used. Levels of disproportions can be set to trigger reviews.

Discrimination: applying different standards to individuals or groups of individuals.

Credible, timely intelligence: information known to an officer sufficient to justify an action taken. Credible, timely intelligence varies with circumstances. Some actions require probable cause evidence. Some actions require specific and articulable facts, sometimes summarized as “reasonable suspicion.” Some actions involving a high degree of officer discretion, consent searches, for instance, or asking a drivers questions irrelevant to the reason for a stop, require less information but officers still need to cite facts sufficient to document that they were not distracted by biases.

Duties: 402 focuses on traffic stops because parts of it are mandated by 590.650, the Vehicle Stops Report law, but duties refer to everything officers, command staff and other personnel do: investigations, searches, decisions about citations and arrests, use of force, hiring, promotions, purchase of equipment, patrol assignments, evaluations, policy reforms, record keeping, responding to public requests, and so on.

Pretext Stop: Pretext stops are usually considered stops in which an officer uses a minor violation in order to make an investigative stop. 402.8 uses the term because it is required by 590.650, the law that mandates the VSR, but the law seems to be using it in a different way that has not been defined. Officers should be allowed to use a minor violation to make a stop when they have good reasons to find out more about a driver, but they should be required to document these reasons, so that it is clear that they were not distracted by stereotypes. The BFPP could define a pretext stop as an investigative stop made without adequate credible intelligence.

Race-based policing: 590.650 also uses this term without a definition. BFPP could define it as a stop or other action in which race or another listed characteristic is inappropriately considered when deciding to act.

### 402.3 POLICY

The Columbia Police Department is committed to providing law enforcement services to the community with due regard to the racial, cultural or other differences of those we serve. It is the policy of this department to provide law enforcement services and to enforce the law equally, fairly and without discrimination toward any individual or group.

#### **Discussion:**

“Due regard to racial, cultural or other differences of those we serve” expresses concern for psychological bias. It acknowledges that differences can cause distrust and misunderstandings unless steps are taken to ensure mutual appreciation.

“Discrimination” is explicitly recognized here for the first time. It expresses concern for bias in which different standards are applied based on group characteristics.

Everyone has prejudices and favorites, but they are only a problem when an officer acts on them instead of acting on facts that indicate criminal behavior and the standard for facts is the same for everyone. Law enforcement must be “without discrimination.”

Biased policing other than that involved in an employee inappropriately considering specified characteristics is still not addressed: racist remarks, favoritism, organizational bias, and so on.

## Recommendations

A definition of discrimination would clarify the policy. Discrimination occurs when officers apply different evidentiary standards to individuals because of their groups.

### 402.4 TRAINING (1.2.9 b)<sup>1</sup>

All affected employees will receive initial training during the orientation phase on fair and impartial/bias-free policing and racial profiling as well as annual training in bias issues including legal aspects. The training should address the psychology of bias and how bias can affect police activities and decision making during various contacts with individuals in our community. This training may be accomplished through in-service, on-line, or shift briefing activities.

## Discussion

“Fair and Impartial” is a phrase often used by Dr. Lori Fridell. It is the name of her [training](#) program, which CPD uses. The central chapter of her book, *Producing Bias-Free Policing*, is “A Comprehensive Program to Produce Fair and Impartial Policing.” “Fair” reflects a concern for discrimination. “Impartial” reflects a concern for bias.

In her book, Dr. Fridell thanks Dr. Jennifer Eberhardt for introducing her to the science of bias. Eberhardt is a Stanford professor of social psychology and co-director of [SPARQ](#). Her 2020 book, *Biased: uncovering the hidden prejudice that shapes what we see, think, and do*, is available at Columbia’s library.

Eberhardt explains that we group things in categories to help us make quick decisions:

The categories we have about social groups work in a similar way. But in this instance, we label the beliefs we have about social groups “stereotypes” and the attitudes we have about them “prejudice.” Whether bad or good, whether justified or unjustified, our beliefs and attitudes can become so strongly associated with the category that they are automatically triggered, affecting our behavior and decision making. So, for example, simply seeing a black person can automatically bring to mind a host of associations that we have picked up from our society: this person is a good athlete, this person doesn’t do well in school, this person is poor, this person dances well, this person lives in a black neighborhood, this person should be feared. The process of making these connections is called bias. It can happen unintentionally. It can happen unconsciously. It can happen effortlessly. And it can happen in a matter of milliseconds. These associations can take hold of us no matter our values, no matter our conscious beliefs, no matter what kind of person we wish to be in the world. (Eberhardt, Jennifer L.. *Biased* (pp. 31-32). Penguin Publishing Group. Kindle Edition.)

Biases can contribute to our conscious beliefs, but they can also be unconscious or implicit. The basic concept of implicit bias is straightforward, Eberhardt writes:

---

<sup>1</sup> The numbers in parentheses are references to the standards of the Commission on Accreditation of Law Enforcement Agencies ([CALEA](#)). CPD is in the process of being accredited.

But implicit bias can be layered and complicated. It's simple to explain, but not so easy to see or to rectify. And the value of training, with all its variables, is often hard to quantify. The vast majority of implicit bias trainings are never rigorously evaluated, in part because measuring their worth is hard. There are no agreed-upon metrics developed by scientists for evaluating training effectiveness. Should the training lead to an immediate reduction in implicit bias? That's a tall order considering that these implicit associations have been practiced over a lifetime. What would a reduction in implicit bias even look like? Should the training lead to better employee decision making? Should it lead to improvements in customer satisfaction? And how would we measure and parse blame or credit for any of that? (Eberhardt, Jennifer L.. *Biased* (p. 279). Penguin Publishing Group. Kindle Edition.)

In a recent [TED](#) talk, Eberhardt explains that once officers know they can be influenced by biases they aren't even aware of—implicit biases—they can be trained to control them by checking to make sure they are acting on facts:

Working with the Oakland Police Department in California, I and a number of my colleagues were able to help the department to reduce the number of stops they made of people who were not committing any serious crimes. And we did this by pushing officers to ask themselves a question before each and every stop they made: "Is this stop intelligence-led, yes or no?" In other words, do I have prior information to tie this particular person to a specific crime? By adding that question to the form officers complete during a stop, they slow down, they pause, they think, "Why am I considering pulling this person over?"

Training in implicit bias plus training to check for facts leads to performance improvements that can be documented:

In 2017, before we added that intelligence-led question to the form, officers made about 32,000 stops across the city. In that next year, with the addition of this question, that fell to 19,000 stops. African-American stops alone fell by 43 percent. And stopping fewer black people did not make the city any more dangerous. In fact, the crime rate continued to fall, and the city became safer for everybody.

Training in implicit bias by itself isn't enough, but the training coupled with emphasis on credible intelligence can make a difference.

Biases generally affect everyone's ability to exercise sound judgement, but officers might get the impression they are being singled out for. It might help them to learn about other biases before being introduced to racial biases. The list is long and many of them are interesting. For instance, confirmation bias is defined by [Wikipedia](#) as "The tendency to search for, interpret, focus on and remember information in a way that confirms one's preconceptions." Or the Gambler's Fallacy is "The tendency to think that future probabilities are altered by past events, when in reality they are unchanged." And Ingroup Bias is "The tendency for people to give preferential treatment to others they perceive to be members of their own groups." Many biases come down to just human nature. They are ways of thinking that help us make quick decisions, but everyone should know they can be misleading. Giving preferential treatment to family members is common sense at home but not acceptable in a public setting.

We have evolved to use biases to help us make decisions, but we need to know when biases distract us from better ways of thinking. Because of our 400 year history of slavery, Jim Crow, lynching, Sundown Laws, segregation and so on, we all share the bias of Black criminality, we need to force ourselves to think twice about whether facts really suggest criminal behavior

To a degree, humans can change these biases but long, hard work is required. An explicit bias might be so strong that an individual is unsuitable for law enforcement, but most individuals can learn to control biases by making sure that they are not distracting them from facts. Acting on facts independent of race is the core of training for bias-free policing.

Biases can be identified only in so far as they result in observable actions, so officers need to be trained on what actions are unacceptable. Any action that cannot be supported with credible intelligence is not acceptable, but any action blatantly racist is always unacceptable. Objective criteria for racist remarks need to be established, from obvious insults to more subtle comments. For instance, Black drivers often complain that officers stop them for minor violations and then show no concern for the threat to public safety the violation caused but instead start asking questions irrelevant to the stop.

The mechanics of data collection and analysis are central to the strategy this policy follows. Our personal perspectives generally do not allow us to be objective, and that's often true for officers too. From their experience, they often say they feel no animosity toward Black drivers and they stop many more White drivers.

Here's where data helps. Because there are 9 times as many White drivers as Black drivers in Columbia, they should be stopping more White drivers. It's only when data is collected and rates and disproportions computed that it's possible to see that Black drivers are stopped at a rate per driver close to 5 times the White rate. Officers would benefit from a brief training session on data, why it can be counted on to flag situations in which discrimination could be occurring and how it reflects improvements in bias-free policing.

Officers need experience communicating with non-officers. Their training is so specialized and their work with other officers is so intensive that they need more contact with the community they serve, especially in a non-confrontational situation where topics are more general than just law enforcement. The best antidote to bias, Dr. Fridell says, is exposure to counter-stereotypes—individuals who clearly cannot be defined by their group. Officers need training that puts them in direct contact with community members and community members need to interact with officers to know they are real human beings.

The city of Columbia already has a program for employees that works this way: Building Inclusive Communities. Facilitators lead safe discussions of difficult issues. It is certified by Peace Officers Standards and Training to satisfy state training requirements.

Lincoln University has a cultural diversity class required of all students—or at least had one several years ago. Professors worked with small groups of students for a semester. The general strategy was to start with nonthreatening prompts, like, What did you have for breakfast? Why do you eat this way? What did your family have for breakfast while you were growing up? Students get used to the idea that everyone is different, everyone grew up with different experiences, everyone has good reasons for what they do, and so on. Every answer is good. The professor makes sure every answer is honored. Then the professor moves on to more difficult prompts.

As noted above, research has shown that in a simulation Black subjects holding a cellphone are more likely to be shot than White subjects holding a gun. CPD at one point had a "Shoot/Don't Shoot" training program based on the research. During the training, officers are likely to learn they are affected by

implicit biases and also learn they can control the bias by improving their skill at looking first for danger and only taking in other details, like race, later.

Shoot/Don't Shoot training programs let officers see how they are affected by implicit biases, and help them learn how to control the biases by focusing on the danger; they can learn to spot the gun before they see race. See Dr. Correll's report on [A Decade of Research on Racial Bias in the Decision to Shoot](#).

Harvard's [Project Implicit](#) takes this approach further. Anyone can participate in online sessions which use the time individuals need to decide how to react to a prompt to measure implicit bias.

[VirTra](#) is a much more sophisticated simulation than Dr. Correll's Shoot/Don't Shoot, as the Riverfront Times reports. Training programs have strengths and weaknesses that have to be assessed. A variety of programs are needed.

Kansas City Police Department officers Chip Huth and Jack Colwell developed a training program based on the precept that "unconditional respect" helps officers see through stereotypes to an individual's true humanity. Major Huth gives a good example of [community policing](#) during a presentation in Columbia. Jack describes the [Basic Mission of Policing](#). Excerpts from [Unleashing the Power of Unconditional Respect](#). Chip and Jack are now associated with the [Arbinger Institute](#).

The Anti-Defamation League offers a free training based on the Holocaust Museum in St. Louis. Officers see what happens to a society when individuals do not receive equal protection. The lesson may be easier to learn from an historical and geographical distance, but application to the United States is clear.

Charles Hays has a new book, *Blue Bias*, which examines the effects bias and other psychological phenomena have on policing from the perspective of a former officer. He says officers should train themselves by reviewing body camera recordings of their actions:

Your bodycam records, if available, combined with your own records, will, over time, reveal the degree of your biases. When you compare age, gender, race, neighborhood, nature of contact and cordiality with your grade perception, you will have what you need to begin remapping your subconscious. This remapping is not easy, but there is research to date that suggests there is hope for overcoming our internalized mismatched map of what we have mistaken for reality. (Hayes, Charles D.. *Blue Bias: An Ex-Cop Turned Philosopher Examines the Learning and Resolve Necessary to End Hidden Prejudice in Policing* (p. 266). Autodidactic Press. Kindle Edition.)

Jennifer Eberhardt and other Stanford academics involved in the SPARQ program make a similar point about using body camera recordings as a learning tool. See their recommendations at the end of Strategies for Change, a [report](#) they prepared for Oakland PD.

Ten years ago, training on bias consisted mostly of the same lecture delivered to a big room full of officers every three years. Many new programs are now available which are much more likely to improve officer performance and job satisfaction.

## **Recommendations**

The Traffic Stop Committee recommends that CPD continue to improve training related to bias. New and improved programs are becoming available.

#### 402.5 BIASED POLICING PROHIBITED (1.2.9 a)

Biased policing is strictly prohibited. Agency personnel may not consider the specified characteristics except when credible, timely intelligence relevant to the locality links a person or people of a specified characteristic to a specific unlawful incident, or to specific unlawful incidents, criminal patterns or schemes. In those circumstances, personnel may rely on these specified characteristics only in combination with other appropriate factors.

These restrictions on the use of specified characteristics do not apply to law enforcement activities designed to strengthen the department's relationship with its diverse communities.

It is considered biased policing if an officer's decisions/actions are based on the fact that the individual's demographics (e.g., race, income) are different from the demographics of the majority of residents in the area in which the individual is found.

Violations of this policy shall result in training, counseling, discipline or other remedial intervention as appropriate to the violation.

#### **Discussion**

402.5 gets more specific about the consideration of facts. When may officers consider race or ethnicity when carrying out duties? Only when "credible, timely intelligence" links a specific individual to specific criminal activity.

Dr. Fridell prefers race be limited to a physical descriptor of a specific individual:

As an example, if police receive information that a credible store owner reported that his store was just robbed by a 5'8" to 6' Asian wearing a red sweatshirt, blue jeans and red tennis shoes, the police in that area following the robbery would focus on individuals meeting that description. "Asian" would be a legitimate part of the confluence of factors that might guide their work. [Page 35]

Agencies can give officers slightly more latitude, she says, but they need to closely monitor officer performance to make sure race in a description does not expand to an excuse to be suspicious of individuals because of race. Her example:

A number of middle school students have reported that adult, Hispanic men are selling fake IDs around a shopping mall. Officers have consistent, trustworthy descriptions that the perpetrators are adult, Hispanic, males, but they do not have sufficiently "full" and reliable individual suspect descriptions (e.g., individuals described with multiple factors such as ethnicity, gender, clothes, facial hair, height). [Page 36]

The CPD policy allows officers to look for individuals meeting this description, but they would still be held accountable for citing "a confluence of factors," such as "location in the mall, behavior consistent with the illegal scheme, and so forth." [Page 35] Although a specific individual has not been identified, sufficient specifics are supplied that officers are unlikely to detain an innocent Hispanic man because he was Hispanic.

Officers like to have as much discretion as possible to do things that protect public safety, but we expect them to build probable cause cases against suspects before acting. Sometimes we allow them to act on

less than probable cause. For instance, they are allowed to conduct a quick search for a weapon if they can articulate specific facts to justify their concern that a weapon is available to a suspect. Officers may be frustrated that they sometimes do not have authority to act but if they do their job by gathering evidence, they can act.

In the mall example, officers should be doing work to build probable cause evidence before detaining a Hispanic male. Go back to the students and get a better description. Review mall surveillance. Do their own surveillance, and so on.

When an action involves an individual with a listed characteristic, the officer must act on credible intelligence and also must apply the same standard to all individuals. This section captures only the first condition. The policy needs to establish appropriate controls to make sure this type of discrimination does not occur.

402.5 says violations can result in “in training, counseling, discipline or other remedial intervention,” but 402.7 leaves out discipline and termination as consequences for biased policing. This policy must make clear that officers who discriminate will face serious consequences.

#### **Recommendations.**

Officers must be notified that biased policing can result in serious consequences.

Add: Officers must apply the same evidentiary standards to everyone.

Other sections are needed to deal with overt racist behavior and organizational bias.

#### **402.6 MEMBER RESPONSIBILITY**

Every employee of this department shall perform his/her duties in a bias-free manner and is responsible for promptly reporting any known instances of biased policing to a supervisor. Also, where/when appropriate, employees are encouraged to intervene whenever they observe an incidence of biased policing.

#### **Discussion**

“Responsibilities” are what employees will be held accountable for. If a responsibility is not clearly stated, employees do not know what’s acceptable and they cannot be held accountable. The more specific the responsibilities, the easier it is for employees to learn what behavior is necessary to meet expectations. The more specific the responsibilities, the easier it is for supervisors to recognize when employees need coaching—and when discipline or termination might be appropriate. In a due-process review of performance, clear standards are needed to ensure fairness.

This section would be a good place to summarize expectations. When is a remark racist? What questions are permitted following a stop for a minor violation?

[Policy 1058](#) covers employee speech, expression and social networking. If it addresses biased speech, this policy might not have to do so in detail.

## **Recommendations.**

### **402.6.1 REASON FOR DETENTION**

Officers detaining any person shall be prepared to articulate sufficient reasonable suspicion to justify the detention independent of the specified characteristics of the individual.

To the extent that written documentation would otherwise be completed (e.g., arrest report, Field Interview), the involved officer should include those facts giving rise to the officer's reasonable suspicion or probable cause for the detention as applicable.

Nothing in this policy shall require any officer to document a contact that would not otherwise require reporting.

## **Discussion**

The requirement to act on documented facts is spelled out most clearly in 402.6.1: As officers decide whether to take an action, they are to look for credible intelligence and make sure the intelligence is independent of race and other protected characteristics, and they are to document their intelligence.

“Detaining” means “stopping.” As sections 402.6.3 and 402. 8 indicate, this policy is closely tied to requirements of 590.650 the state law that mandates the Vehicle Stops Report and requires agencies to have specific policies. “Detaining” covers traffic stops and other situations in which officers stop individuals. Contacts in which the officer does not detain the individual, in which no official action would be reported, in which the individual would assume he or she was free to go at any time, are exempted.

The VSR does not collect data on sobriety checkpoints, but officers would report these stops too, following the requirements of this section.

“Specified characteristics” include race and ethnicity, as seen in 402.1. “Independent of the specified characteristics” means the facts must be strong enough to exclude the possibility that the officer was distracted by racial stereotypes.

“Reasonable suspicion” is shorthand for specific and articulable facts. “Probable cause” is intelligence sufficient to support prosecution. “Credible, timely intelligence” should be included here, since it is the standard established in 402.5.

Credible intelligence covers the range of facts appropriate to all the situations encountered by officers. Some facts are so strong an officer must act, as when an officer observes a violation that is a clear threat to public safety or finds that there is an outstanding warrant against an individual. Officers have much more discretion in, for instance, deciding to ask questions unrelated to the reason for a stop. An officer may ask for consent to a search without any evidence of criminal behavior but is still responsible for citing convincing reasons for the request.

The policy does not attempt to specify credible intelligence. Other policies give officers specific guidance. For instance, the [Traffic Stop policy](#) says officers are to always act on seatbelt violations.

Details will still have to be worked out as supervisors interact with officers, telling them when their facts are adequate and when they need to look for stronger facts.

BFPF sets up a tougher evidentiary standard than judges do in court. Judges will probably continue to set a relaxed standard for reasonable suspicion, but in situations in which concerns have been raised in a jurisdiction about discrimination, the agency and its controlling officials—the Chief, the City Manager and City Council—can establish policies which require officers to document their facts so that supervisors and concerned members of the public are better able to tell when officers are acting on facts and when their facts might not be convincing. In some cases, discipline might be appropriate but usually a supervisor would just coach the officer to act on stronger facts or improve documentation.

Officers document their facts when they make a stop, but no documentation occurs when they observe a violation and do not make a stop. Discrimination occurs when officers give privileges to a group, not just when they target a group for enforcement. This type of bias is more difficult to detect so command staff and supervisors need to watch out for it.

402.6.1 specifies what officers are to do when they detain someone, but 402.1 says the policy applies to all personnel and all duties. Disproportions in the way groups are affected by policing can occur because of the procedures command staff order. Command staff decisions can be affected by systemic or organizational bias. Concentrating patrols in an area with a high concentration of drivers from one group can, for instance, result in disproportions. 402 would benefit from a section that requires command staff to document the facts they use when establishing policies and procedures so that officials and the public can determine whether the facts justify the procedures and are independent of race.

Clerical staff must also perform their duties in a bias-free manner. In situations in which a group might be treated unfairly, clerical staff might be required to document facts.

### **Recommendations**

Define “credible, timely intelligence.”

Some way must be found in the policy to include all personnel and all duties. How will command staff be held accountable to acting on facts when they make organizational decisions?

### **402.6.2 BUSINESS CARDS**

Officers shall provide a business card or suitable alternative upon request. The business card or alternative shall contain identifying information including, but not limited to, the officer's name, division, badge or other identification number and a telephone number.

### **Discussion:**

The larger concern raised here is making it easy for individuals to communicate with CPD about contact with an officer. The policy should address what an individual can do to complain about biased policing, or credit an officer for good work.

[Policy 1020](#) covers complaints.

The card should include information about how to file a complaint. A QR code on the business card would help.

Complaints and compliments are one way to receive feedback from the community, but they catch just those individuals who had very good or very bad experiences. Surveys of a random selection of individuals who have been stopped by officers provide a more balanced picture. The city of Columbia conducts surveys of residents to help guide policies. The [2018 Columbia city survey of residents](#) asked individuals who had been stopped by Columbia officers whether the stop was legitimate. Black drivers were 5 times more likely than White drivers to report illegitimate stops.

Survey data and traffic stop data support each other. Each document possible discrimination. As policies, training and supervision are improved, disproportions in both should reflect improved policing and improved attitudes in Black drivers. The question about illegitimate stops was dropped in the most recent survey but it should be included in subsequent surveys.

Other questions might be useful. Did the officer explain the public safety reason for the stop? Did the officer ask questions unrelated to the reasons for the stop? Did an officer observe a serious violation but not make a stop or just give a warning?

#### **Recommendations.**

402.6.2 should address a broader range of issues related to community relations, not just business cards.

The complaint process needs to be reviewed to make sure it is easy to use.

Questions concerning law enforcement should be in the annual city survey.

#### **402.6.3 REPORTING TRAFFIC STOPS**

Each time an officer makes a traffic stop, the officer shall report information that includes (§ 590.650, RSMo): Items listed in Red below were added to the requirements for the 2020 reporting period. The Columbia Police Department received an exemption regarding the recording of the new information until such time as our electronic recording system through RMS could be updated to accommodate the changes. Once the system is updated, officers will be responsible for recording all of the following information to include the sections in red:

1. The date and time of the stop.
2. **Officer Assignment.**
3. The location of the stop.
4. The violation resulting in the stop.
5. **If an "Investigative" violation (stop), check category of violation.**
6. The driver's race/minority status (based only on observation).
7. The driver's age.
8. The driver's gender.
9. **Zip Code of driver's current residence.**
10. Is driver a resident of the law enforcement agency's jurisdiction?

11. Whether a search was initiated.
12. If yes, the probable cause/authority for the search.
13. What was searched?
14. Duration of the search.
15. Was contraband discovered?
16. If contraband was discovered, type of contraband. Check all that apply.
17. The result of the stop.
18. If citation or warning issued, violation alleged.
19. Was the driver arrested?
20. If an arrest was made, the crime/violation alleged.

In addition to the information reported under § 590.650, RSMo, the Columbia Police Department will record the following information regarding traffic stops:

1. Did the driver or a passenger admit to the use of a controlled substance?

### **Discussion**

*Not just traffic stops. Use of force, pedestrians. Serious crime: targeting friends.*

The VSR was intended by legislators to test whether complaints by Black drivers of disproportionate treatment were merely anecdotal or were confirmed by data. For 20 years the data has confirmed that large disproportions exist against Black drivers in many situations in many agencies. The data also document reduced disproportions. The consent search disproportions against Black drivers fell to 0.99 in 2019.

Officers are required by state law 590.650, which mandates the Vehicle Stops Report, and by the Code of State Regulations, which implements the law, to provide written documentation of traffic stops by completing a check-off sheet for each stop. The check offs are part of the documentation required by 402.6.1. CPD has recently started using a new computerized version which does not work well.

The check offs cover the initial detention and what happens during the stop (citations, arrests, searches, contraband found and so on), as well as details related to the detention (age, gender and racial or ethnic group of the driver, location, and so on). CPD collects extra information with the check offs. For instance, officers record day of week and time of day. The check offs indicate many of the variable facts which gave rise to the officers' actions but expanded check offs would reduce the need for officers to provide supplemental information, as required by 402.6.1

As an example of a variable, Chief Geoff Jones used the age of a vehicle. He told the committee that as a new officer riding with his supervisor they had observed two cars with minor equipment violations. The supervisor asked him which one he would stop then advised him to stop the older vehicle because an older vehicle is more likely to be associated with other violations or more serious criminal activity.

The Chief said he now doubts the fairness of basing the decision to make a stop on the age of the vehicle because it unfairly affects individuals with lower incomes, and Black drivers are more likely to have low incomes. Socioeconomic status and race are both listed characteristics in 402.

A check off for age of vehicle is probably not necessary if the information can be retrieved from a linked database.

VSR data reported to the AG is in summary form. Totals are given for each category, broken down by group. CPD keeps the data in “incident-based” form, in which each incident is a database record or a line in a spreadsheet. Incident-based data allow much greater analysis. For instance, daytime incidents can be examined separate from nighttime incidents.

The VSR data are foundation for a comprehensive plan to address biased policing, but the BFPP does not articulate the process. The BFPP is set up so that officers document the credible intelligence they act on. Disproportions in VSR data flag situations in which groups are disproportionately affected by officer actions and discrimination could be the cause. But the data also help CPD determine when officers were acting on credible intelligence. If, for instance, Black drivers are stopped at a rate per estimated driver higher than the rate per White driver (the disproportion in 2019 was 4.63) then CPD might be able to document that officers were acting on credible intelligence. For instance, calls for service might inflate stops of Black drivers.

CPD has a history of high stop disproportions. Researchers have found that members of groups sometimes commit violations at different rates, but the difference is unlikely to be this high. Stops made for investigative reasons have not been well-documented, so the AG added investigative stop check offs for 2019. These subcategories are Call for Service, Detective or Crime Bulletin, Officer Initiative, Other Investigative Stop.

CPD has said that officers make many stops because they are dispatched to investigate calls for service—911 calls—so they should be using that check off when it is available. Officers often wait to observe at least a minor violation before making an investigative stop, so the call for service and the violation would be checked. Once this data is available, calls for service might be documented to be a major factor in stop disproportions. Officers exercise little discretion in these stops—they are just following a command decision to investigate calls—so officer bias is not likely to be involved but organization bias might be.

Similarly, a large number of stops made because officers are acting on bulletins could help explain the stop disproportion. The credible intelligence that justifies the stop is that, for instance, detectives building a probable cause case against a suspect directed officers to look for an opportunity to stop the suspect.

If the data document a high number of stops in response to a bulletin and a disproportion against Black drivers is high enough to raise concerns, command staff would determine whether the stops were justified by credible intelligence. Did the detectives have sufficient intelligence to justify the bulletin? Did the officer stop the specific individual identified in the bulletin?

The Traffic Stop Committee has suggested a number of additional check offs. For instance, under investigative stops: Pretext Stop, Computer-assisted Alert (license plate scanner, etc.), Sobriety Check Point, Welfare Check, and so on.

The check offs summarize the variables facts officers take into account when acting so that rates and disproportions can be computed. Sometimes the data might be enough for a supervisor to determine that the officer acted on credible intelligence. Sometime a supervisor might have to look at details in other records. The supplemental facts are usually in the forms and reports officers complete when they take an action. They can also be in Body Worn Camera (BWC) and Mobile Audio Visual (MAV) recordings and other departmental records, such as instructions from dispatch and bulletins alerting officers to criminal activity. But CPD needs easy ways to access summary information without digging through records so that patterns can be seen, alerting command staff to incidents and situations that demand closer attention.

The data collected by the Attorney General is published annually. Anyone can download the VSR for any agency in the state and see, for instance, how many stops were made by Black drivers, or how many arrests were made of White drivers for drug violations.

The official VSRs offer very little analysis of the data. Group stop disproportions are given based on estimates of the number of drivers in each group. For actions officers take after the stop has occurred, summary disproportions are given for arrests and searches, for instance, the rate per stop of arrests for Black drivers compared to the rate for White drivers. Disproportions for contraband found are given based on contraband found per search.

High disproportions do not prove discrimination because officers could have been acting on credible intelligence, but they do flag situations in which officers should be alerted to be careful to act on facts and in which supervisors should check the facts officers record. Officers whose performance does not improve are subject to discipline.

Disproportions can be computed for each category of data, which allows more detailed identification of situations of concern. For instance, in 2019 Black drivers were arrested at a rate per stop 1.34 times the rate for White drivers, but many of the arrests were for outstanding warrant arrests. Outstanding warrants are often for minor violations, such as failure to pay a traffic fine. Officers must make the arrests, so officer bias is unlikely. When outstanding warrant arrests are left out, the Black arrest disproportion goes down to 1.17; black criminality is not as pronounced as the overall arrest rate might suggest—and officers appear to be less likely to be discriminating against them.

Even when officers are doing a good job of acting credible intelligence, organizational bias can be the cause of disproportions.

The data can't be counted on to catch all situations in which discrimination might be occurring: discrimination can occur when officers ignore violations by one group. In the complete dataset for the VSR, some agencies have relatively low rates for Black drivers in some categories like consent searches, but there is still a high disproportion compared to the rate for White drivers. For this to occur, the rate for White drivers has to be exceptionally low. Officers in these agencies aren't targeting Black drivers for consent searches but they are rarely suspicious enough of White drivers to ask for consent. Perhaps the officers should be more suspicious of White drivers. Perhaps they should be more careful about acting on stereotypes.

## **Recommendations**

Since the VSR does not provide rates and disproportions for all categories of data collected, CPD needs to develop the capacity to do so. Much more detail can be seen by analyzing incident-based data, a version of which CPD has made public for five years. Advanced statistical techniques are sometime helpful but are not necessary to flag situations in which discrimination might be occurring. Clerical staff should be able to provide command staff and supervisors with lists of incidents which can be either be determined to be free of discrimination or the officer can be coached to look for more convincing facts. Or systemic factors can be identified.

Fix data collection

Add check offs as necessary to summarize the variable facts officers take into account.

Compute rates and disproportions for all categories of data collected.

Use disproportions to flag situations in which discrimination might be occurring.

Review incidents in those situations to determine whether officers acted on credible intelligence.

Link databases in order to reduce the need for check offs and to make information more accessible.

Look for situations in which policies and procedures contribute to discrimination.

#### 402.7 SUPERVISOR RESPONSIBILITY

Supervisors shall ensure that all personnel in their command are familiar with the content of this policy and will be alert and respond to any incidents, complaints or allegations of biased policing.

1. On at least a monthly basis, supervisors will randomly review mobile audio video (MAV) recordings, and body worn camera (BWC) recordings (policy 447), to ensure compliance with this policy. Access to the MAV and BWC systems by supervisors and the viewing of an individual officer's video footage is documented by the respective system and can be audited by command staff to ensure periodic reviews are being completed. Recordings that capture biased policing or potential biased policing should be appropriately retained for administrative investigation purposes.

2. Supervisors who observe or become aware of potential biased policing by an employee that does not contain evidence/information to substantiate a complaint should make efforts to respond with early interventions. These efforts may come by way of an informal verbal warning/coaching/counseling. Any verbal warning/coaching/counseling shall be documented with the employee in a Performance Log entry in accordance with policy 1020.

3. Supervisors who observe or receive a formal complaint or allegation against an employee of biased policing/behavior shall initiate a complaint in accordance with policy 1020.

4. Any supervisor, or other employee, who becomes aware of retaliatory actions, or plans for retaliation, against any member of this department who discloses information concerning biased policing, shall inform Internal Affairs personnel, or their supervisor to initiate a complaint.

#### Discussion

1. Monthly random reviews of officer performance seem like a useful procedure to at least try, although recordings that capture biased policing might not be frequent enough to produce useful information when viewed at random and supervisors should also be looking at other records of officer performance.

What behavior would supervisors look for in recordings? The recordings could catch officers making racist comments to drivers, although the policy as written has not addressed this aspect of biased

policing. It has only addressed bias as it appears when an officer has not based an action on credible intelligence.

The recordings would probably not be the best way to assess whether officers were acting on credible intelligence. For instance, if there were a disproportion against Black drivers in stops for speeding violations, a supervisor would do better to look at the intelligence cited by the officers. If the officer recorded that the driver was going 40 mph in a school zone then discrimination was unlikely to be involved.

2. This subsection seems to be saying that when a supervisor suspects biased policing but does not have clear evidence, informal coaching is appropriate. Perhaps this edit would help:

Supervisors who observe or become aware of potential biased policing by an employee but do not have evidence/information to substantiate a complaint should make efforts to respond with early interventions.

Most incidents needing a supervisor's intervention will fit this pattern; counseling and coaching rather than discipline will be the result. A high disproportion in a specific situation, for instance, consent searches, flags possible discrimination. A review of incidents, possibly by clerical staff, finds a few in which the officer might not have cited adequate credible intelligence. The supervisor discusses the incidents with the officer. The officer agrees to look for stronger evidence, or the officer convinces the supervisor that the evidence was adequate.

3. Policy [1020](#) deals with complaints, internal investigations and discipline. The policy is currently under revision. It makes no mention of bias or discrimination, but it does address issues such as non-professional behavior. If a complaint of biased policing is made, 402 would provide the basis for assessing employee performance so it must provide criteria for actions that trigger review.

4. This provision to address possible retaliation is good.

402.7 makes no mention of a performance evaluation directed at bias-free policing. Whatever annual evaluation officers receive should include bias-free policing. The less formal sessions with a supervisor in which the officer receives guidance (see 1020.1.1) are probably more effective in shaping behavior than formal annual evaluations.

The BFPP sets up a system in which possible biased policing is primarily flagged by disproportions in traffic stop data, and then flagged incidents are reviewed to see whether officers were acting on credible intelligence. 402.7 makes no mention of the data or credible intelligence which should be the main approach to bias-free policing.

402.8, Administrative Review, outlines an alternative way of using data to help officers achieve bias-free policing that should be included under supervisor responsibility. If a review of the data shows an officer is stopping a greater proportion of members of a group than the resident proportion of that group, then someone, presumably some form of supervisor, conducts an investigation to see if the officer is conducting pretext stops. If the officer has not cited intelligence sufficient to justify the pretext stop, then the investigator looks to see if race-based traffic stops occurred, meaning the officer applied different standards to groups or the officer's behavior can be seen to have been affected by some other form of bias.

One weakness in this procedure is that group resident proportions in the jurisdiction do not necessarily reflect the group proportions officers encounter in their patrol areas. An officer patrolling an area with a high proportion of Black drivers will stop a higher proportion of them than their resident proportion even if no discrimination is involved, so the disproportion could be a false positive. The procedure would not identify an officer who patrols an area with few Black drivers but who stops every one of them without having adequate credible intelligence—a false negative.

In a small jurisdiction, officers might patrol the whole jurisdiction. In a large jurisdiction, officers might patrol just one precinct. Columbia has more fluid assignments that make proportions difficult to determine.

The law requires this procedure to be followed. CPD includes the procedure in 402.8 but responsibility for following the procedure is not assigned here to a supervisor or to anyone in Policy 1020. CPD could satisfy the law by investigating a small number of officers with the highest stop disproportions. But CPD should rely primarily on identifying the highest disproportions for situations documented in the check offs, reviewing each incident for credible intelligence, investigating incidents in which credible intelligence might be inadequate, and then counseling officers if necessary. This procedure needs to be spelled out somewhere in 402; it could be done in 402.7

Because BFPP says nothing specific about what constitutes other forms of biased policing, supervisors have no authority to hold employees accountable. The policy needs clear criteria for all biased actions

### **Recommendations:**

This section should instruct supervisors to use the elements of the BFPP which are intended to “establish appropriate controls to ensure that employees of the Columbia Police Department do not engage in biased policing.” These elements include:

1. Employees must record credible intelligence for their actions.
2. The records include the data generated by the check offs for actions taken during each traffic stop.
3. If group rates for stops or for other actions officers take indicate group disproportions for specific situations high enough to raise concerns, then supervisors look at these situations to see if officers cite adequate intelligence.
4. If adequate intelligence has not been cited, then the supervisor starts by reminding the officer what is expected and then moves on to more serious interventions if necessary.
5. For other instances of biased policing, such as employees making racist remarks, supervisors apply criteria added to the policy.

### **402.8 ADMINISTRATIVE REVIEW (1.2.9 c)**

An annual administrative review of the department’s practices, submitted annual state report, and any citizen concerns shall be conducted to determine whether any officer of this agency has a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the Columbia Police Department (§ 590.650, RSMo).

If the review reveals a pattern, an investigation will be conducted to determine whether any officer(s) is routinely stopping motorists for violations of vehicle laws as a pretext for investigating other violations of criminal law (§ 590.650, RSMo).

Any officer found to have engaged in race-based traffic stops shall receive appropriate counseling and training within ninety days of the review (§ 590.650, RSMo).

The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment (§ 590.650, RSMo).

The general results of the review will be made available to all employees. Supervisors shall review and discuss the results with the individuals they are assigned to supervise.

## Discussion

This procedure for assessing biased policing is mandated by [590.650](#), as the references indicate. The strategy was a big advance 20 years ago, but better methods are now known and the law should be updated. Agencies are required to have policies defined in the law, hence this section of the BFPP.

BFPP adds a number of items to the required content. Citizen complaints and departmental practices are to be reviewed. Practices should include examining the possibility of organizational bias, in which procedures which appear to be race-neutral have unfair results. For instance, command staff might assign concentrated patrols in areas with high concentration of Black drivers without any credible intelligence that public safety will be improved. Hiring and promotions might unfairly favor some listed characteristics.

The actual language of 590.650 is different from the summaries in BFPP so it's useful to see the original:

5. Each law enforcement agency shall adopt a policy on race-based traffic stops that:

(1) Prohibits the practice of routinely stopping members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law;

(2) Provides for periodic reviews by the law enforcement agency of the annual report of the attorney general required by subsection 4 of this section that:

(a) Determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency; and

(b) If the review reveals a pattern, require an investigation to determine whether any peace officers of the law enforcement agency routinely stop members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law; and

(3) Provides for appropriate counseling and training of any peace officer found to have engaged in race-based traffic stops within ninety days of the review.

The course or courses of instruction and the guidelines shall stress understanding and respect for racial and cultural differences, and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

One reason for agencies to have policies such as 402 is to satisfy the requirement of [590.650](#) that they have a policy on "race-based traffic stops."

590.650 requires prohibition of pretext stops but they are not defined, and agencies are unlikely to have prohibited them or enforced the prohibition. Many agencies have had (and still have) policies that say a stop may not be based solely on race. Before the most recent revision, BFPP was a “solely” policy.

“Solely” policies may sound fine but they allow officers to base an action on race as long as any violation had been observed. An officer who observed even the most minor violation was permitted to make a stop because of the driver’s group, which is blatant discrimination. Complaints of racial profiling made to CPD were routinely rejected as long as the officer had cited even a minor violation.

Pretext stops can have valid roles in law enforcement. The law seems to be targeting false pretexts, pretexts which do not provide credible intelligence sufficient to justify the stop. Since the law does not define a pretext stop, BFPP can define it as a stop made without adequate credible intelligence that is clearly independent of protected groups and applied equally to all groups

Similarly, 590.650 does not define a “race-based traffic stop,” so BFPP can define it as a stop or other action in which race or another listed characteristic is inappropriately considered.

It’s clearer in the law that the administrative review is supposed to start with a review of the agency’s annual VSR, in which disproportions are given for stops, arrests, searches and contraband found. A pattern is a mathematical disproportion. The VSR uses census data to estimate group proportions, so the VSR does not reflect the proportions of drivers who do not reside in the jurisdiction—transient drivers. The VSR as now implemented in the [Code of State Regulations](#) has recently added stop disproportions for just residents, for whom the census-based benchmarks should be more accurate.

A small disproportion indicates a weak pattern; a large disproportion documents a strong pattern, as long as enough incidents occurred. The law gives no guidance on how large a disproportion needs to be to trigger an investigation. St. Louis County Police Department computes disproportions for each officer and then investigates those whose disproportions are two standard deviations above the mean—the highest 2%.

An officer patrolling an area with a high proportion of Black drivers will stop a higher proportion of them than their resident proportion even if no discrimination is involved, so the disproportion could be a false positive. The procedure would not identify an officer who patrols an area with few Black drivers but who stops every one of them without having adequate credible intelligence—a false negative.

Since data document post-stop actions, these should be reviewed too. For instance, arrest rates are arrests per stop, so the estimates of drivers are not involved, just the empirical number of stops. 590.650 does not require reviews of post-stop actions but they are a natural use of the data collected.

The VSR provides disproportions for stops based on census benchmarks, for post-stop actions based on stops and for contraband found based on searches, but only for total stops, total arrests, total searches and total contraband found, not for each of the subcategories, such as consent searches as a subcategory of search. The numbers of incidents are in the data set, but no rates and disproportions are computed. Each agency must do this for itself. CPD needs to have a policy that spells out how disproportions will be computed, either as part of BFPP or in a separate policy.

When stop disproportions are inconclusive because group proportions of drivers in an officer's patrol area cannot be determined, then post-stop disproportions fill the gap. For instance, a high disproportion for consent searches flags possible discrimination.

After the initial review to spot disproportions, an investigation looks more closely at officer actions to see if pretexts were involved—if the officer based actions on race rather than acting on credible intelligence.

Officers who engaged in race-based actions receive counseling and training. No mention is made of discipline or termination, but race-based policing should have these possible consequences.

The Administrative Review is to be available to employees but, surprisingly, no mention is made of the public. The backbone of the BFPP is that CPD takes on responsibility for documenting that officers act on credible intelligence instead of being distracted by racial stereotypes. The review includes procedures, the data, the disproportions, the intelligence cited, complaints and so on, but the conclusion needs to address whether biased policing is occurring and what CPD is doing to provide bias-free policing.

The BFPP's summary of 590.650 could be improved but it generally reflects the requirements. Defining pretext stops and race-based policing in terms of credible intelligence brings the law and the policy into alignment.

### Conclusion: Bias-Free Policing and Community Policing

The 2014 report of the [Mayor's Task Force on Community Violence](#) sets a baseline for police reforms that has been confirmed by Council support for community policing. Police cannot be expected to address violence on their own. We must all work together to determine how to address the social causes of violence: better job training, better access to programs designed to help with parenting skills, early-childhood training, housing, mental health and so on.

Bias-free policing is an important component of community policing. If some members of a community are targeted for enforcement because of their group and not because of facts known to officers, then, as 402 says, alienation and distrust result, making law enforcement much more difficult.

The strategy 402 follows is not always easy to see in the details, but it is basically just reminding officers they must act on facts.

Don Love  
Draft 9/3/20 with changes tracked to 9/29/20