DURHAM
1869
CITY OF MEDICINE

Durham Human Relations Commission
and
Civilian Police Review Board
Response & Executive Summary

August 21, 2014

Thomas J. Bonfield
City Manager

During the June 16, 2014 Durham City Council Meeting, City Manager Thomas Bonfield committed to personally review and evaluate 34 recommendations from the Human Relations Commission (HRC) regarding allegations of racial bias and profiling against the Durham Police Department (DPD). This report is the City's response to those recommendations, and also includes responses to 10 additional recommendations from the Durham Civilian Police Review Board (CPRB) aimed at improving its role in enhancing police relations with the community.

Since June, the City Manager along with his executive staff have thoroughly reviewed each recommendation, comparing them with best law enforcement and North Carolina peer city practices, and evaluating them with regard to feasibility, current and future resources and overall benefits to the Durham community. While feedback and information from the Police Department were crucial, the review team also met with six advocacy groups to hear their thoughts and priorities on the recommendations. Each group presented its concerns, priorities and provided research and anecdotal information to support their positions. Their feedback was welcomed and played a humanizing role in the overall consideration of the recommendations, and as importantly, provided their perspectives of Durham's current atmosphere given the events of the last year. Their participation in this process, along with other research combined to clearly show how trust, accountability and transparency are vital components of a harmonious police/community relationship.

The enhancement of those three areas – Trust, Accountability and Transparency-- laid the foundation for consideration, and ultimately, concurrence (or nonoccurrence) and implementation of each recommendation. In general, both the CPRB and HRC recommendations fell into categories of process and procedure, community relations, and legal authority. In some cases, the Police Department was already conducting recommended activities, but acknowledged that heightened public awareness was needed. In other cases, while necessary systems were in place and data were being collected to enhance processes and draw conclusions, the information had not been integrated into an overall management assessment related to policing practices as they affect individual officers, and the Police Department as a whole. Finally, other recommendations, if implemented, would require City Council and State legislative review and approval as determined by the City Attorney's Office, which was extremely helpful during this process.

In the course of the review of the recommendations, it became apparent that some were appropriate and in the City Manager's authority to implement. These recommendations are either complete or in the process of being implemented. Conversely, some recommendations, while within the City Manager's authority, did not receive concurrence, but were suitable for further conversation to ensure effective ongoing communication. In those cases, management recommendations are for increased and ongoing dialogue between the parties involved.

It goes without saying that ensuring the constitutional rights of citizens is a cornerstone of judicial process, and the role that police play is pivotal. Extra focus was paid to the topic of consent searches in this review, including how they are conducted, documented, reviewed and the training that is provided to officers. Durham is not alone in this undertaking, as other cities including Fayetteville, N.C. and Dallas, TX, were consulted about their recent requirement for documentation. While neither could verify the direct impact of their consent documentation policies, adverse or positive, changes to policy were at the direction of the police chiefs. In part as a result of this evaluation the Durham Police Department will begin requiring Written Consent to Search forms for all consent searches of premises and investigative encounters. Consent searches associated with vehicle stops will require documentation by audio or video recording, or written or verbal consent; however, officers will continue to be allowed to use discretion in accepting verbal consent. It is important to note, in light of recent concerns, the Durham Police Department has reviewed its current policies and practices and implemented changes, such as making the use of cameras and microphones mandatory (for cars so equipped), that may reduce some concerns regarding consent searches of vehicles without negatively impacting operations. These changes will be codified in General Orders. While that is the case, further actions to ensure fairness, document disparities and other trends, and take necessary management action are underway.

It is well documented that racial profiling is one of the most complex issues facing law enforcement professionals today, not just in Durham, but throughout the country. Black male motorists continue to comprise a majority of consent searches, and searches leading to arrests. Of particular concern are the arrests for possession of misdemeanor amounts of marijuana. Each of the advocacy groups addressed this issue as a primary concern, some urging that possession of a small amount of marijuana be made a low-enforcement priority for police. As reported in the Herald Sun, Durham's marijuana arrest rates are almost 23 percent below the national average in 2012. A significant concern is the unexplained racial disparity for an 18-month period between January 1, 2013 and July 1, 2014, for 768 misdemeanor arrests. Of those arrested, 86 percent were black, while 13.7 percent were white. Clearly, there is a need for a more thorough analysis of circumstances associated with those arrests before conclusions can be drawn. Those reviews must become systematic to monitor any unexplained disparities.

While decisions regarding enforcing marijuana laws are principally made at the command level and at the discretion of the individual law enforcement officer, a "low level" priority enforcement directive demands a coordinated approach and buy-in from the entire criminal justice system. The Police Department, Sheriff's Office, District Attorney and District Court must be at the table for such a discussion and decisions that impact the future of so many.

Both the Police Department and the community have a common goal: A safer community. To achieve that goal, it is vital that Durham has a Police Department that values and understands

the need for Trust, Accountability and Transparency. When any of these is not communicated well, by action or inaction, and is allowed to deteriorate, the goal is undermined to the detriment of the Department and the public. While some might view the past few months as possibly damaging to the Police Department and to Durham, it has been a valuable introspection requiring the asking of difficult and sometimes sensitive questions, reviewing of processes and practices that had been taken for granted due to real or perceived lack of need, and the implementing of policies that reinforce accountability. While deficiencies are acknowledged, it is also recognized that on the whole, the Durham Police Department lives up to its mission: "To minimize crime, promote safety, and enhance the quality of life in partnership with our community." The Department also has been recognized with international accreditation at the highest levels. This review has been healthy for the Police Department, for the City and beneficial for police and community relations. It is the City's desire that this review and the Administration's recommendations signal the repairing and re-building of a trusting relationship between the Police Department and all segments of the Durham community. The City expresses its gratitude to everyone who participated in this process and patiently waited for this administrative review to be completed.

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

HRC 1 : We recommend the Durham Police Department regularly publicize their involvement in the community and neighborhoods via media outlets such as local the newspaper, Durham Police Department website, social media etc.

Issues/Analysis

The Durham Police Department (DPD) and the City Manager's Office fully support further efforts to promote the department's community engagement/involvement. The Public Information Unit (PIU) publicizes efforts when they are made aware of them. Of concern is that there is no formalized or systematic procedure in place to notify the PIU in a timely manner when there are opportunities for promotion.

Based on a previous analysis of other local police departments, DPD is changing the reporting structure of the Public Information Unit to provide more focus on the department's processes and ability to provide more emphasis on publicity, internal communications and community engagement efforts. Hiring of a Public Affairs Manager is underway to manage the duties of a senior public affairs specialist, a senior public relations coordinator and the Crime Stoppers coordinator. Projected outcomes of a permanent manager will be a more consistent internal communications process, better external communications efforts, including social media, and enhanced relationships with the media.

Legal Analysis

N/A

Peer Review Results

N/A

Best Practices Review

N/A

Management Recommendation

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.

Status

Administration concurs. Publicity efforts will continue and be further enhanced with advertising, public relations efforts and other methods when appropriate. The Police Department is proceeding with recruiting a Public Affairs Manager and hopes to have the position filled by late Fall.

DURHAM
1869
CITY OF MEDICINE

RESPONSE TO THE RECOMMENDATIONS OF THE HUMAN RELATIONS COMMISSION (HRC) AND CIVILIAN POLICE REVIEW BOARD (CPRB)

HRC RECOMMENDATION

HRC 2: We recommend City Council find ways to increase awareness and improve attendance at PAC meetings.

ISSUES/ANALYSIS

PAC is an acronym for *Partners Against Crime.* The current iteration of PACs in Durham had its genesis in public safety efforts. Launched as an effort for citizens and public safety officials to collaborate on conceiving and implementing solutions to crime, PACs have now evolved into collaborative meetings to manage the issues and concerns related to the delivery of all city services. Not straying from the original purpose, PAC meetings routinely include reports from the police department on public safety and policing issues within the respective PAC districts. The PACs are supported by the Community Engagement Division of the Department of Neighborhood Improvement Services (NIS). As a part of its support duties and strategic initiatives, NIS has already begun specific efforts to increase attendance at PAC meetings as a part of it overall community engagement mission.

The foundation of this work involves establishing and affirming relationships with neighborhood organizations throughout the city that are formally structured or loosely affiliated. Through these groups, outreach is conducted to connect residents to the PAC structure, encourage participation in PACs, identify issues and concerns of residents in an effort to make PAC meetings proactive, and to provide technical assistance to the associations to participate in the resolution of their concerns. This has enabled the creation of formal and informal communication structures through social media, literature distribution, email lists and the like. PAC newsletters have been created and distributed through these outlets. This year, the staff is working with PAC leaders to develop new member information folders. The staff also plans to consult with the Office of Public Affairs to consider the option of public services announcements. Beginning in fall 2014, NIS staff will more formally track attendance at PAC meetings to monitor the impact of these efforts.

PAC Attendance FY 2012-2013

	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June
PAC 1	25(HC)	40 (E)	30 (E)	40(HC)	30 (HC)	40(HC)	42(HC)	107**(HC)	36(HC)	46(HC)	11(HC)	47(HC)
PAC 2	30	42	50	36	30	31	40	43	115**	25	31	57
PAC 3	46	44	43	44	MC	39	41	46	135**	MC	NM	MC/TC*
PAC 4	44	47	47	51	39	36	43	72**	50	30	NM	36
PAC 5	20	20	15	15	MC	15	12	15	38**	30	22	17
Total	165	193	185	186	99	161	178	283	374	131	64	190

PAC Attendance FY 2013-2014

	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June
PAC 1	61(HC)	29(HC)	39(HC)	28(HC)	51(HC)	38(HC)	44(HC)	NM*	117**(HC)	29(HC)	43(HC)	47(HC)
PAC 2	50	40	40	40	38	30	35	143**	51	43	42	57
PAC 3	NM	39	39	29	24	21	44	68**	68	40	NM	33
PAC 4	45	53	53	45	36	55	51	54	121**	112	NM	36
PAC 5	NM	18	18	20	12	19	49	10	130**	26	23	17
Total	156	188	189	162	161	163	223	275	463	250	180	190

HC – Headcount by Coordinator
E – Email from co-facilitator
NM – No Meeting
MC - PAC Meeting cancelled by Co-facilitator
MC/TC – PAC Meeting and Tour cancelled by Co-facilitator
NM- PAC 1 did not meet in February 2014 due to weather conditions (snow and ice).*
*** Coffee with Council*
***PAC 3 and 4 did not meet in May due to Graduations and Mother's Day Weekend.*

Average based on the number of meeting held throughout the year.

PAC 3 numbers are down due to conflict with former leaders and a reorganization of PAC 3. New leadership and coordinator are looking for ways to increase the number of people attending PAC 3. For example: creating a neighborhood association contact sheet to contact members before the PAC meeting.

Legal Analysis

N/A

Peer Review Results

N/A

Best Practices Review

N/A

Management Recommendation

Administration recommends a continuation of the efforts of NIS to boost PAC attendance.

Status

Administration concurs, and the City has already begun to address this recommendation.

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

HRC 3: We recommend the Durham Police Department put more emphasis on promoting the Citizens Police Academy.

Issues/Analysis

The Durham Police Department currently promotes the Citizens Police Academy (CPA) through local media, print and electronic, prior to, during and after the classes, most traditionally, with a press release prior to the class. The Department also uses social media, since it has more than 2,000 Facebook followers to promote the class. Budget for more proactive promotion is a concern, and the DPD has partnered with other departments, including Durham Parks and Recreation, to publicize their efforts. They also co-promote with other departmental activities and programs, such as National Night Out, Neighborhood Watch and through Community Resource officer outreach. Other Citywide media are used, including the City Manager's Report, City Hall Bulletin Boards and Durham Television Network (cable channel 8). District Commanders also reach out to Partners Against Crime meeting attendees to recruit participants.

The Police Department is not opposed to a brochure, for which distribution will be important, but would like to wait until a more comprehensive and strategic curriculum is developed. Staff also reports that many academy participants in the last class say they learned about the CPA on Facebook.

The median class size is between 18-22 attendees at the start of the class, with about 15 graduating. Maximum size is 30. In previous years, a separate academy was held for Latino citizens but was discontinued due to low participation.

The demographic representation of the last four academies is:

- Whites – 39
- Black – 19
- Latino – 4
- Other – 4
- Male – 36
- Female - 33

Legal Analysis

N/A

Peer Review Results

N/A

Best Practices Review

N/A

Management Recommendation

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.

Status

Ongoing. Promotional activities, as described in the Issues/Analysis section above, to promote the academy are continuing. Community Services Division command staff are discussing how to enhance the CPA.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

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.

Issues/Analysis

Recruiting from within the Durham community gives the police department an opportunity to enhance relationships and recruit employees who have a stake in Durham's future. To that end, the recruiting division of the Durham Police Department maintains an active schedule and high visibility for recruiting events and activities within the city. These efforts not only aim to recruit Durham residents, but are geared to take advantage of the rich diversity of our community. The recruiting division maintains a presence at a variety of events that attract different audiences and interest groups from throughout Durham.

The department does maintain statistics on the residency and demographic characteristics of individuals who apply for employment with the department, and tracks that data through the training and hiring process. This data is reviewed on a regular basis to ensure a broad cross-section of diverse applicants are being recruited into the department, and to ensure that the recruitment program is responding to ongoing changes in the community.

Despite a strong commitment to hiring Durham residents, the department does not discriminate against applicants from outside the community, and maintains a commitment to hire the best qualified candidates regardless of their residency. Since August 2010, 185 candidates have been accepted into the Durham police Academy. Of those, 51 were city of Durham residents (28%.) As of today, 216 of the Durham Police Department's 520 sworn officers reside in Durham (42%.)

Legal Analysis

N/A

Peer Review Results

N/A

Best Practices Review

N/A

Management Recommendation

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.

Status

Ongoing.

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

HRC 5: We recommend psychiatric evaluations for all officers and employees of the Durham Police Department are required once every three years.

Issues/Analysis

The emotional and mental health and well-being of police officers are among the highest priorities for the City of Durham and its Police Department and are essential for the health and safety of the police officers and the community. The Durham Police Department (DPD) has engaged professional psychological assessment and counseling services (currently FMRT Group) as a regular practice for persons being considered for sworn law enforcement positions, personnel exposed to extreme and stressful circumstances for many years. Durham Police Department General Order 2005R-1 details the positions and circumstances that sworn police officers and civilian personnel access psychological services and evaluations either on a voluntary and directed basis.

Legal Analysis

N/A

Peer Review Results

	Fayetteville	Raleigh	Greensboro	Asheville	Wilmington	Winston-Salem	Charlotte
Does your police department require periodic psychiatric evaluations of employees?	Yes	Yes	No	No	No	No	No

	Fayetteville	Raleigh
Which employees are required to complete periodic psychiatric evaluations?	An employee whose actions or use of force results in a serious injury or death will be placed on administrative leave/duty with pay pending an administrative review of the incident. The employee will remain on administrative leave/duty until such time that they have been cleared of any department-initiated proceedings and the contracted psychologist determines that the employee is able to return to regular duty. Fitness for duty exams can also be mandated based upon situational work conduct matters.	Selective Enforcement Unit (S.W.A.T. members)
How often must psychiatric evaluations occur?	Per situation.	Annually

Best Practices Review

The Department's current General Order is consistent with best practices regarding the use of psychological services for sworn and civilian department personnel.

Management Recommendation

The 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.

Status

No further action needed.

Subject: PSYCHOLOGICAL SERVICES

I. INTRODUCTION

The Durham Police Department places a high priority on promoting and maintaining the psychological well being of its employees. The Psychological Services Provider (PSP) provides services towards this end for sworn, reserve and non-sworn employees, as well as offering behavioral science support for departmental operations.

II. SERVICES

Counseling services will be offered to employees, their families and those in a family-like relationship with employees. Such services will be on a short-term/crisis intervention basis. Referral will be made for long-term counseling and substance abuse treatment.

Fitness for duty evaluations will be provided or referral will be made for their provision.

Psychological evaluations will be provided for new applicants, lateral transfers and transfers to special squads.

Critical incident counseling and *stress management services* may be provided to any employee, family member or person in a family-like relationship with an employee. Such incidents refer to any occasion of serious psychological trauma and include but are not limited to: serious injury or death of an employee, or caused by an employee; shooting incidents; witnessing death or serious injury.

Training will be provided in stress management and other procedures to facilitate efficient operation of the Department.

Psychological consultation services will be offered for situations involving: barricaded subjects; hostage negotiations; psychological profiles of criminal subjects; any situation where command staff or the PSP determine that departmental operations will benefit from such services. In these situations the PSP's role is that of consultant to the field, division or bureau commander.

Psychological consultation services will be offered to other City Departments on a selective emergency basis.

Research will be carried out to enhance the welfare of employees and the operation of the department.

III. REFERRAL TYPES

A. Self Referral

Self-referral may be made by any employee, family member or person in a family-like relationship with an employee, by contacting the PSP directly by phone or in person. Services will be provided at the remote PSP office as per individual arrangement. Such contacts will be subject to the rules of confidentiality specified below.

B. Referral for Voluntary Services

Referral for voluntary services will proceed as for self-referral defined above. The referring individual will contact the PSP to provide information regarding the referral.

C. Referral For Mandatory Services

Referral for mandatory services may be initiated by preparing written documentation detailing the reasons for the referral and submitting this to the PSP for approval. This documentation is subject to the rules governing confidentiality.

Upon approval, the employee will be notified as to the nature of and reasons for the referral and will be responsible for contacting the PSP within 72 hours of such notice to arrange an appointment.

Notification of compliance with the referral may be shared with others in the employee's direct chain of command to the extent that this is required for effective operation of the department.

The content of treatment sessions will remain confidential. Supervisors may be notified as to compliance with required treatment regimens.

D. Referrals for Fitness for Duty Evaluations

Referrals for fitness for duty evaluations will follow the procedure for mandatory referrals as defined above. Initial contact with the PSP will determine the need for a complete fitness for duty evaluation. Such evaluations will be carried out by the PSP or at the request of the person evaluated and at the department's expense by any licensed psychologist or psychiatrist.

Evaluation reports will be provided to the Chief and may, at the Chief's discretion, be shared with others in the employee's direct chain of command. Results will be communicated to the employee. Should the employee disagree with this evaluation, he or she may arrange an evaluation with a professional of their choice as defined above, at their expense. Should these evaluations disagree, the Chief will make final determination. Employees so entitled may appeal any decision through the city grievance procedure.

IV. PRE-EMPLOYMENT AND IN-SERVICE PSYCHOLOGICAL TESTS

New applicants, lateral transfers from outside the Department and applicants for special high risk, high civil liability units, as designated by the Chief, will receive psychological evaluations by the PSP or a qualified designee. Applicants will receive written notification of time and place for this procedure. The procedure will consist of written psychological tests and a psychological interview. Based on the above, a report will be prepared indicating the applicant's psychological fitness for the position.

This report will remain in the applicant's Internal Affairs confidential file and a copy will remain with the PSP. Results will be communicated to such command staff as determines the applicant's hiring, to the city's staffing unit and to the applicant. Should the applicant disagree with these findings, he or she may follow the procedures defined in the section on Fitness for duty evaluation, above.

V. CRITICAL INCIDENTS

In the event of a critical incident, contact between the involved employee and the PSP will be mandatory. The PSP will be notified immediately by

the employee's supervisor and shall arrange a time and place for this meeting to take place.

VI. TRAINING

The PSP will be available for consultation with command staff for provision of any training that will benefit employees or Departmental operations. The PSP will provide stress management training for new recruits as a regular element in the Training Academy, and will provide such training for existing staff via in-service programs.

VII. PSYCHOLOGICAL CONSULTATIONS

In the event of barricaded subjects, hostage negotiation, or any other circumstance where supervisory or line staff determine that psychological consultation services would benefit the situation, the PSP will be notified immediately via the Communications Center, direct telephone or pager, and will respond to the site for provision of such services. The PSP may be contacted directly by any employee for consultation in situations where a psychological/behavioral perspective will benefit criminal investigations.

Supervisory staff from other city departments may contact the PSP directly for consultation on situations that may require psychological services.

VIII. CONFIDENTIALITY

Specific content of counseling sessions between the PSP and employee is privileged except in the following circumstances:

- The PSP clinically determines the employee is a danger to self or others.
- The PSP clinically determines the employee is involved in or at immediate risk of involvement in child molestation.
- In a situation where the PSP becomes party to a legal action involving a client, in which case the principal of "limited waiver" of confidentiality where facts pertinent to the case may be revealed at the direction of the trial judge becomes applicable.

Any persons receiving information concerning an employee's counseling will be subject to these same rules of confidentiality. Violations will be subject to an Internal Affairs investigation and may result in disciplinary action as defined by the Personnel Privacy Act (N.C.G.S § 160-168A).

_____

Steven W. Chalmers
Chief of Police

The FMRT Group
Fitness * Medical * Risk * Training

FMRT's Pre-Employment Psychological Testing for Durham Police Department:

Pre-Conditional Offer Testing:

The BRAINS™: (Historical and Biographical Behaviors) It is an online assessment that enhances agencies' background investigations, interviews, and other early hiring steps by providing a comprehensive report of an applicant's historical events and attitudes that will help you make better-informed decisions about hiring, training, and retention. In addition to identifying commonplace to very serious historical life events the BRAINS™ report provides applicants verbatim explanations of every event endorsed. Special BRAINS™ indices also address applicant openness and candor, debt/income ratio, and applicant inconsistencies.

Post-Conditional Offer Testing:

1) CPI - PSSR (434) – (Normal personality traits with law enforcement officer comparison groups) The CPI Police and Public Safety Screening Report is a specialized report designed to be used by licensed psychologists in conducting psychological evaluations of applicants for police and other public safety positions. The CPI Police and Public Safety Selection Report is based on the 434-item version of the California Psychological Inventory, which was first published in 1995 (Consulting Psychologists Press, 1996). This special report, which is based on a normative sample of more than 50,000 public safety job applicants, supplements the basic CPI instrument and its interpretive lore with a number of innovative features designed to improve the accuracy and fairness of employment screening decisions in the public safety field. These features include the following:

- Risk statements that estimate the likelihood that the applicant will demonstrate specific selection relevant problems.
- CPI scale profiles based on norms for public safety job incumbents, which allow the applicant's test scores to be compared to those of applicants who were subsequently hired and successfully held the job that the applicant is applying for.
- CPI scale profiles based on norms for public safety job applicants with the same gender and ethnicity as the current applicant, which allow the psychologist evaluating the applicant to rule out pertinent ethnic and gender determinants of scale scores.
- A list of individual "selection-relevant" CPI items endorsed by the applicant, indicating responses identified by a panel of expert psychologists, and by a research study on officer performance, that may be indicators of possible job performance problems.
- A summary list of CPI scales for which the applicant's scores are favorable or unfavorable indicators of the applicant's likely performance on specific job functions or job problem areas.

2) PSR+ - (Normal and abnormal traits and/or disorders with law enforcement officer comparison groups) The Protective Services Reports (PSR Plus) measures Emotional Adjustment, Integrity/Control, Intellectual Efficiency and Interpersonal Relations, which are critical characteristics for protective services personnel. The PSR Plus provides a broader picture of personnel in high-risk occupations by including information regarding a person's normal personality as well as pathology-oriented information. Thus, this report includes a more comprehensive view of the individual, because the 16 normal personality factors as well as 12 pathology-oriented scales are included.

3) Examination by psychologist – The pre-employment psychological evaluation of an applicant includes review of; all testing (BRAINS, CPI, and PSR+), IQ screening (Shipley Institute of Living Scale), communication skills (verbal, non-verbal, and written), and demeanor.

References:

IPAT. (2012). *Protective Services Reports Technical Manual*. Champaign, IL: IPAT.

Roberts, Michael and Johnson, Michael. (2001). *CPI Police and Public Safety Selection Report Technical Manual*. Los Gatos, CA: Law Enforcement Psychological Services, Incorporated.

The FMRT Group
Fitness * Medical * Risk * Training

Notes on our Fitness for Duty Reports

- Our Findings are "Up Front" in a Concise Report.
- ***Only*** "Fit for Duty" **OR** "Not Fit for Duty" Finding.

(Unless more information is required, leading to an "Opinion Deferred Pending Further Information" Finding.)

At The FMRT Group we recognize that you need our clear and straightforward opinions about your employee's ***ability to safely perform essential job functions***.

As a result, our "Fitness for Duty" opinions spring from:

1. Knowledge of the particular and specific job that is obtained from a review of the job description,
2. Knowledge about your concerns regarding specific job issues / events, and
3. Our medical, psychological, and/or behavioral findings about your employee at the particular time of the evaluation.

As a result, you receive our concise, written report that addresses the specific question: *Is this employee able to safely perform essential job functions at this time?*

You may also request and receive our telephonic communication about our evaluation findings and/or our assessment of medical/psychological/ behavioral options and alternatives for your formal disposition.

What Terms Mean

I. Fit for Duty means…

A. It is our professional opinion that there are no medical, psychological, or behavioral problems that preclude,

B. The employee's safe and essential job functioning,

C. In the specific job,

D. At the present time, and the employee is

E. Cleared for administrative / disciplinary action if indicated.

II. Not Fit for Duty means…

A. It is our professional opinion that a medical, psychological, or behavioral problem precludes,

B. The employee's safe and essential job functioning,

C. In the specific job,

D. At the present time.

E. Return to "fitness" in the specific job may or may not be possible at some future time, depending on any number of factors including time, treatment, remediation, etc.

F. Alternate work ***may*** not be precluded if it is available – this is subject to Employer policies and protocols.

III. Opinion Deferred Pending Further Information

A. We don't know yet!

B. Waiting on other documentation, records or data.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendations

HRC 6: We recommend that the vehicle camera remain operating at all times. Officers should not be allowed to disable the camera.
And
HRC 7: We recommend digital copies of these recordings be maintained no less than 180 days.

Issues/Analysis

The intent of this recommendation is to ensure in car cameras (ICC) capture all meaningful interactions between police officers and the public within range of the in car cameras, and to ensure that video is kept for a length of time sufficient to document these interactions for subsequent inquiries and reviews.

At present, there are three methods whereby Durham Police Department officers may initiate an active ICC video recording:

1) activate the overhead emergency lights;
2) press the "record" button on their wearable microphone transmitter;
3) press the "record" button on the overhead ICC display. The only way to stop an active recording is to press the "stop recording" button on the overhead ICC display.

General Order 4065 R-3 prohibits officers from stopping an active recording until "there is no longer any reasonable likelihood of recording video that is evidentiary (criminal actions, crime scenes, statements by or to a suspect/victim/witness, etc.) or procedural (searches, arrest process/transport, police vehicle response, police vehicle accident, etc.) in nature." Officers are expressly prohibited from tampering with or disabling the ICC. Officers are also required to immediately report any ICC malfunctions to the DPD Help Desk so that needed repairs can be made. This same General Order also mandates that officers notify their immediate supervisor of any ICC malfunction. Failure to comply with any portion of these directives will subject the officer to disciplinary action. Presently, all police vehicles and accompanying equipment are inspected daily by the officer operating that vehicle. Additionally, supervisors conduct mandatory vehicle and equipment inspections weekly.

There would be significant cost implications and technical challenges associated with attempting to capture all video from the start of the shift to the end of the shift. In addition, finding useful portions of the video for investigations and inquiries would be labor-intensive, due to the large amounts of superfluous footage that would need to be scanned. Finally, storing all of that video for the requested 180 days would add additional technical and financial challenges. All that being said, the existing procedures for capturing officer interactions, paired with general orders governing

officer interaction with the ICC, appear to accomplish the desired outcome of documenting all officer interactions with the public (within view of the cameras.)

With respect to retention of the recordings, the department is already retaining all uploaded videos for a minimum of 180 days, even if they are not marked for other specific retention. This policy has been in place for the past 2-3 months.

Legal Analysis

N/A

Peer Review Results

None of the cities in our peer survey reported that their cameras are recording at all times while the vehicle is in operation. All cities in our peer survey reported that the camera automatically records vehicle stops. Two of the seven cities reported that officers have some discretion in disabling cameras during stops. Peer cities reported to keeping recorded videos between 30 days (lowest) and seven years (longest), with several reporting 90 days as their standard.

Best Practices Review

Review of information from the Department of Justice and consultation with consultants in the field of law enforcement indicate that the policies of the Durham Police Department are consistent with best practices. In car video cameras generally are triggered by an event or turned on manually, and recording continues until the event is over. There does not appear to be any specific guidelines as to how long these recordings should be kept.

Management Recommendation

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. 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.

Status

Complete, with continuing monitoring.

DURHAM
1869
CITY OF MEDICINE

RESPONSE TO THE RECOMMENDATIONS OF THE HUMAN RELATIONS COMMISSION (HRC) AND CIVILIAN POLICE REVIEW BOARD (CPRB)

HRC/CPRB RECOMMENDATION

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.

ISSUES/ANALYSIS

This recommendation is already required by the Durham Police Department in General Order (GO) 4052 R-1 Vehicle Stops which states in part:

> *"He or she will verbally control the movement of all occupants in the vehicle, with special attention being paid to the hands of the occupants. The officer will visually check the back seat for passengers and/or weapons, and after determining that this area is clear, initiate contact with the driver. All verbal contact will be accomplished in a firm, fair, impartial and courteous manner. The officer will always exhibit a professional attitude. The officers will normally then ask the driver to turn off the ignition and place both hands on the steering wheel. He or she will normally ask for the driver's license and vehicle registration, explain the reason for the stop, and what action he or she intends to take. . ."*

All officers are already trained that it is mandatory to provide the reason(s) for the traffic stop - once they have gained control of the encounter.

The recommendation to document the traffic stop is already satisfied in one of three ways: (1) Officers have the discretion to issue a citation wherein the violation listed is the reason for the stop; (2) they may issue a warning ticket wherein the violation listed is the reason for the stop; or (3) the reason for the stop is required to be documented on the SBI traffic stop reporting form. The person being stopped would receive a copy of this documentation under either scenario (1) or (2) above but not if the officer elected not to issue a citation or written warning, decided to simply issue a verbal warning, or there was no violation after all. While possible, it would not be appropriate for officers to be required to issue either citations or written warnings on every traffic stop, unless the driver of the vehicle requested one in lieu of a verbal warning.

Legal Analysis

Creating a written document that recites the basis for a stop or detention is not legally prohibited nor required. If such a document is created, it would likely be considered a record of a criminal investigation which is exempt from the Public Records Act and not typically disclosed by the Department. The Department will need to consider the practical implications of the release of such information. I would recommend that to avoid any conflicts with the Council-Manager relationship as defined in the Durham City Charter, such a procedural change should be mandated by the City Manager rather than by Council action or directive.

Peer Review Results

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Does your police department use signed written forms prior to conducting consent searches?	Yes	Yes	Yes	Yes	Yes.	Yes	Yes
If so, are they mandatory?	No	Yes	No	No	No	No	No
Does your police department require officers to document (by incident or field investigation report) encounters that result in search of a person or property?	No	Yes	No	No	No	Yes	Yes

Best Practices Review

N/A

Management Recommendation

The Administration recommends that the current practices outlined in GO 4052 R-1 continue but that the GO 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.

Status

Department review of GO 4052 R-1 should be completed by December 31, 2014.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC/CPRB Recommendation

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.

HRC 10: We recommend the 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.

HRC 11: We recommend supervisors and possibly professional standards review these reports for any irregularities.

Issues/Analysis

The City Attorney's Office was asked and provided a review and summary of the current statutory and case law issues associated with stop and search, consent and non-consent searches, and related issues (attached) as these issues continue to gain national attention and be refined by the courts at all levels.

The Durham Police Department (DPD) has several versions of Written Consent Forms, most of which are available in both English and Spanish. These forms need to be standardized and available in both English and Spanish and a committee within the department is working to standardize the form and all other forms within the DPD and make them bilingual.

The use of the Consent to Search form has been at the discretion of the individual officer within the DPD for both premises and vehicle consent searches. A recent poll of High Enforcement Abatement Team (HEAT) sergeants indicates that this form is always used when conducting consent searches of dwellings and other structures. A random sampling of HEAT case files was conducted and several copies of completed forms accompany this memorandum. In light of this information the police department concurs that written Consent to Search forms should be required for all consent searches of premises, dwellings or other real property and is taking steps to amend General Orders to make this change. An oral directive has been provided to the commanders accordingly effective immediately. In the event of a refusal to sign the form, no search will be conducted. Additionally, all pre-planned "knock-and-talks" or encounters where the officers know in advance that a request for consent to search will be made, will require the presence and oversight of a supervisor (a corporal or sergeant). Patrol officers who find the need to conduct knock-and-talks that arise out of quickly evolving investigative situations, will be required to make every reasonable effort to have a

supervisor present; however, if the situation dictates a more immediate attempt, then the officers may proceed with requirement for a signed Consent to Search form still stands.

The potential implications of requiring a signed Consent to Search form on traffic stops for vehicle searches has a varied response from law enforcement agencies. Many agencies have implemented a required "Documented Consent Search" policy, as noted in the research below, and are satisfied with the results to date. Most agencies and even the Durham District Attorney and Chief District Court Judge indicate their preference for documented searches, however acknowledge they too are subject to challenge of whether the consenter actually knew what they were agreeing to or signed the form.

Other agencies, including the Durham Police Department disagree that written consent should be required in all circumstances. Concerns that officer safety or situational control of traffic stops could be jeopardized if an officer has to retrieve or explain a consent form instead of simply having the driver respond "yes or no", are two frequent issues raised. Additionally if a person is charged subsequent to a consent search, the District Attorney's Office must be comfortable with the "consent" to move a case forward and the judicial system allows them the opportunity to challenge the "voluntariness" of a consent in court. Thus any concerns as to whether the person actually consented; or knowingly consented; whether the consent was the product of coercion or duress, are all important matters properly addressed within the purview of the judicial process.

An increasing number of traffic stops in Durham have the opportunity for documented consent because all frontline patrol cars are equipped with a camera system and wearable microphone. The Department has already made the use of the camera and microphone mandatory on all traffic stops. Additionally, the Department made some technical changes to the camera systems to try and ensure that the cameras are working whenever a traffic stop is initiated. The Department has begun installing camera systems in the HEAT units as well and mandated their use on all traffic stops. Recorded videos are retained for 180-days.

Presently, all officers employed with the DPD receive training on consent searches during their academy training. This is reinforced in field training during the PTO phase at which time the recruit is working under the direct instruction of a training officer. Additionally, officers may attend various other in-depth training that expands on the laws surrounding consent searches. For example, the Police Law Institute is an in-depth course specifically on the laws of arrest, search, and seizure – to include thorough coverage of consent searches.

Within the DPD, the topic of consent searches is codified in General Order (GO) 4004 R-2 Warrantless, Search and Seizure (attached).

In mandating the form for a dwelling and making it optional for a vehicle, the department is following the line of reasoning of the courts which place a higher level of privacy on dwellings than vehicles. There are no circumstances where a home can be searched without consent or a search

warrant; however, the courts have provided certain exceptions where a vehicle may be searched without consent or a search warrant due to the exigency created by their mobility.

In light of the recent concerns being raised, the DPD has reviewed its current policies and practices and implemented changes that may reduce some concern regarding consent search of vehicles without negatively impacting operations. These changes will be codified in General Order 4004 R-2 and include the following:

- Patrol Officer's will be directed to make every reasonable effort 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. Officers will be encouraged to employ the written consent to search form; however, the discretion will remain with the officer.
- Requests for consent to search by H.E.A.T. officers during traffic stops will be documented by audio or video recording. The option of utilizing a signed consent form is always available as well.
- Electronic Traffic Stop Form submission software has been adjusted to track the locations of traffic stops, as well as whether consent to search was given or denied.

Additionally, the Department is also researching the possibility of deploying wearable body cameras to all front-line patrol and H.E.A.T. units. This project will require initial vendor presentations; selection of products for testing/evaluation, and a 90-day testing/evaluation period to assess the viability and functionality. Several vendors have already been contacted and presentations are being scheduled. At the end of the presentations, products will be selected for testing and evaluation. Such a tool could serve to further allay public concern; protect officers from frivolous complaints; and provide additional evidentiary value as well.

Police Foundation Executive Fellow, Chief Tony Farrar, recently completed an extensive yearlong study to evaluate the effect of body-worn video cameras. This randomized controlled trial represents the first experimental evaluation of body-worn video cameras used in police patrol practices. Wearing cameras was associated with dramatic reductions in complaints against officers. The authors conclude: *"The findings suggest more than a 50% reduction in the total number of incidents of use-of-force compared to control conditions, and nearly ten times more citizens' complaints in the 12 months prior to the experiment."*

The complete report can be found at http://www.policefoundation.org/content/body-worn-camera.

Additional information on this study can be found at http://www.nytimes.com/2013/04/07/business/wearable-video-cameras-for-police-officers.html?_r=2&.

The use of Incident Reports to document encounters that require a search of the person or property as a general practice as recommended by the HRC is not necessary. The purpose of Incident Reports

is to document actual crimes as discovered by officers or reported by complainants/victims. When consent searches lead to the discovery of contraband, the encounter is already documented in an Incident Report. DPD officers are trained and expected to be as proactive as possible with respect to traffic enforcement and criminal deterrence. Officers are also strongly encouraged to get out of their cars whenever possible and engage people in conversation. To employ the Incident Report form for general documentation of citizen/suspect encounters would be contrary to the intended use of the report itself and could have a negative impact on the integrity of overall crime data.

The Durham Police Department already has a means in place to document investigative encounters with citizens – the Field Contact form and or the Intelligence Submission form. While, the employment of both forms is presently discretionary; it would be beneficial to the Department and transparent to the public to require their use to document investigative encounters.

The enhanced data collection being implemented should provide the supervisory chain of command adequate aggregate information to identify disparities and other trends. Patrol Officer reports are reviewed on a periodic basis by supervisory personnel as a routine part of quality control and performance. A requirement that in addition to these periodic reviews that supervisors or Professional Standards review all Field Contact or Intelligence reports for "irregularities" does not appear to be necessary or an efficient use of time.

Legal Analysis

Not legally prohibited though I would recommend that to avoid any conflicts with the Council-Manager relationship as defined in the Durham City Charter, such a procedural change should be mandated by the City Manager rather than by Council action or directive. Additionally, the Department should consider the practical implications of such a new initiative. Finally, there is no legal authority to compel a citizen to sign this form.

Peer Review Results

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Does your police department use signed written forms prior to conducting consent searches?	Yes	Yes	Yes	Yes	Yes.	Yes	Yes
If so, are they mandatory?	No	Yes	No	No	No	No	No
In what languages are the forms available?	English; Spanish	English; Spanish	English	English; Spanish	English	English; Spanish	English

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Does your police department require officers to document (by incident or field investigation report) encounters that result in search of a person or property?	No	Yes	No	No	No	Yes	Yes
Does your police department use any measures or benchmarks to monitor racial disparity in stops and searches?	Yes	Yes	Yes	No	Yes	Yes	No
If so, what measures/benchmarks are in use?	We utilize the state data that offiicers enter for racial profiling on traffic stops. Annual review regarding motor vehicle stops/searches for reporting submitted to State.	1.8.6 SUPERVISION AND ACCOUNTABILITY (excerpt from policy)	Review of rates against other agencies is available on line. Also, we create an annual report that measures complaints against employees, nature of the compalint, etc.... which allows us to identify trends.		Biased-Based Profiling forms are completed after traffic stops.	Traffic stop data forms are completed.	

Best Practices Review

Contact with the Commission on the Accreditation of Law Enforcement Agencies, the International Association of Police Chiefs, and the Police Executive Research Forum all responded that their agencies had not established a best practice around these issues and were not aware of a professional law enforcement agency that had endorsed a best practice. The organizations indicated

that there position is that each community and law enforcement agency should establish policies in this regard that best met specific community situations. Representatives also indicated that standards in this regard more likely to function well when they are directed by the chief law enforcement officer or command staff.

The City of Fayetteville, NC, was contacted as over the last several years that community and police department have had an active discussion regarding documented consent searches. Approximately four years ago the Fayetteville City Council voted to prohibit the police department from conducting verbal consent searches. The Fraternal Order of Police sued over this directive and the directive was ruled invalid. Later a police chief issued a general order requiring documentation of non-probable cause consent searches. Initial concerns were that officers would no longer even bother to try and obtain documented consent because "they did not want to get burned", would not want to take the time to obtain written consent, or the driver would not agree to written consent; all with negative results. Since that time a new police chief has been hired and has continued the requirement for documented consent. Reports are that the number of consent searches has declined significantly however representatives from Fayetteville indicate they cannot confirm this is as a direct result of the documented consent search policy and possibly was as a result of a new policing approach under the new chief that concentrates less on stopping vehicles in certain areas for license, equipment, and moving related violations and directs more resources to other data driven law enforcement initiatives. The City also attempted to partner on a community education campaign regarding traffic stops and documented consent but these efforts were not particularly effective.

Dallas, TX Police Chief, David Brown was also contacted to discuss this issue. Chief Brown has served his career with the Dallas Police Department chief for a few years. Following a variety of issues and community concerns, Chief Brown issued a general order requiring documentation of all consent searches. This documentation can occur by in car camera, microphone, body camera, or in writing. Chief Brown advised that because obtaining written consent was generally more work, he believed police officers went out of their way to get documented consent by audio or video recording. Chief Brown was not certain of the impact of these policies on the number of consent searches actually, but believes the policies of documented searches that have been directed have not adversely impacted the Dallas Police Department's results.

Attempts were made, albeit unsuccessfully, through the International Association of Chiefs of Police to identify communities that experienced adverse impacts by requiring documented consent searches although allowing verbal consent remains a common and predominant practice by law enforcement agencies across the country.

Management Recommendation

The Administration recommends the following:

1. That all written consent to search forms be available in English and Spanish in every police vehicle that has exposure to requesting consent searches.
2. That GO 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 encouraged to employ the written consent to search form; however, the discretion will remain with the officer.

3. 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.
4. That Electronic Traffic Stop Form submission software be adjusted to track the locations of traffic stops, as well as whether consent to search was given or denied.
5. That investigative encounters with citizens using a Field Contact or Intelligence Submission form to document investigative encounters be required.
6. 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.
7. That the Department by either General Order or command direction require written documentation of all investigative encounters.

STATUS

Ongoing.

Seizures of Persons: Voluntary Encounters v Investigative Stops and Arrests

The Fourth Amendment protects people against unreasonable searches and seizures, stating in pertinent part, "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated...."

I. Determining Whether a Seizure Has Occurred

A court must first decide whether an officer's conduct was such a significant interference with a person's freedom of movement that a seizure occurred under the Fourth Amendment.

A. A seizure occurs when, in view of all the circumstances surrounding the incident, a reasonable person, innocent of criminal activity, would have believed that he or she was not "free to leave." *Florida v. Royer, 460 U.S. 491 (1983).*

The Court later ruled in *California v. Hodari D.* that an officer's "show of authority"- which occurs when an officer exercises authority without using physical force; for example, by chasing a suspect on foot or attempting to stop the driver of a vehicle by displaying a blue light - does not constitute a seizure unless the person submits to that show of authority. *499 U.S. 621 (1991).* A person submits to a show of authority when a fleeing suspect stops pursuant to an officer's command or the driver stops a vehicle pursuant to a blue light. Thus, a person who does not submit to an officer's show of authority under these circumstances has not been seized under the Fourth Amendment. *See, e.g., State v. Mewborn, 200 N.C. App. 731 (2009).*

If an officer does not just engage in a show of authority but rather applies actual physical force to the suspect, a seizure occurs even if the suspect does not submit to the officer's efforts to stop the suspect. However, the Court in *Hodari D.* stated that if the suspect, once seized, breaks free or escapes from the officer's grasp, the seizure would terminate.

Thus, a seizure clearly occurs when officers arrest people by physically taking them into custody and transporting them to the magistrate. Even when officers have not made an arrest, a seizure may also occur when they restrain a person by physical force or display a weapon, or when their language indicates that their instructions must be followed. There are no simple rules or exact guidelines for determining when and whether a seizure has occurred. The most useful guide comes from carefully examining, case by case, the endless variation of law enforcement interactions with people that occur daily. This helps officers understand some of the distinctions derived from appellate court cases and apply them in everyday duties. Officers receive State mandated annual in-service training on such cases, as well as bi-monthly law bulletins from this office.

B. Objective Standard

When a court analyzes a factual situation to determine whether a seizure occurred and, if so, whether the seizure was an arrest or an investigative stop, it uses an

objective standard: how a "reasonable" person would view the circumstances. A reasonable person is defined as one who is innocent of criminal activity. *Florida v. Bostick, 501 U.S. 429 (1991).* Although people who have been approached by officers may say that they believed they were not free to leave, a court will look at the objective factors (such as whether physical force was applied or threatened, whether commands as opposed to requests were made, etc.) surrounding the incident with the legal standards of what constitutes a seizure, not the individual suspect's subjective beliefs. *State v. Bone 354 N.C. 1 (2001); State v. Peck, 305 N.C. 734 (1982).* Similarly, whether officers subjectively believe that they were or were not seizing a person is not generally relevant. *Sibron v. New York, 392 U.S. 40 (1968); State v. Zuniga, 312 N.C. 251 (1982).*

II. Voluntary Encounters

Law enforcement officers often interact with people without seizing them and therefore do not require any legal justification for their actions. For example, officers do not seize people merely by approaching them in a nonthreatening manner in a public place, identifying themselves as a law enforcement officer, and asking questions if the person is willing to answer them. *United States v Drayton, 536 U.S. 194 (2202); Florida v. Bostick, 501 U.S. 429 (1991).*

III. Seizures: Investigative Stops and Arrests

A. Investigative Stops/Detentions: The General Legal Standard

A brief stop of a person in a public place for some investigative reason, such as questioning or identification, does not always constitute an arrest. Such stops, often called investigative stops or detentions, are legally justified by less factual information than is required for an arrest. Only *reasonable suspicion* that the person committed, is committing, or is about to commit a crime is necessary to justify a brief detention of a suspect. *United States v. Cortez, 449 U.S. 411 (1981); United States v. Hensley, 469 U.S. 221 (1985).* Reasonable suspicion is determined from the facts known at the time of the investigative stop, not from the results of a later search. *Smith v. Ohio, 494 U.S. 541 (1990).*

1. Definition

The United States Supreme Court has attempted to describe reasonable suspicion: "Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person…But the essence of all that has been written is that the totality of the circumstances-the whole picture-must be taken into account. Based upon the whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity…

The idea that an assessment of the whole picture must yield a particularized suspicion contains two elements, each of which must be present before a stop is permissible. First, the assessment must be based upon all of the circumstances. The analysis proceeds with various objective observations, information from

police reports, if such are available, and consideration of the modes or patters of operation of certain kinds of lawbreakers. From these data, a trained officer draws inferences and makes deductions that might well elude an untrained person.

The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as the fact finders are permitted to do the same-and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.

The second element…is…that the process just described must raise a suspicion that the particular individual being stopped is engaged in wrongdoing. Chief Justice Warren, speaking for the Court in Terry v. Ohio,…said that "[t]his demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth amendment jurisprudence." *United States v. Cortez, 449 U.S. 411, 417-418 (1981).*

2. **Determination of Reasonable Suspicion**
A court considers many factors when it determines whether an officer has reasonable suspicion to stop a person. There is no magic number of factors which must be present; it is more of a quality and quantity analysis based upon the totality of the circumstances. Common factors considered include, but are not limited to:
    - The officer's observation of conduct that, in light of the officer's training and experience, appear to be criminal
    - Information the officer receives from other officers, citizens or informants
    - The time of day or night
    - Whether the area is a high crime area
    - The suspect's proximity to a location where a crime was recently committed
    - Whether the suspect is a stranger to the area
    - The suspects' reaction to the officer's presence, including flight after seeing the officer
    - The officer's knowledge of the suspect's prior criminal record and activities
    - The suspect's flight from the scene of a crime

    See generally 2 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment §§3.3 through 3.6 (4th ed. 2004).

3. **Stopping Motor Vehicles**
Reasonable suspicion to stop a person who is in a motor vehicle is governed by the same principles discussed above. It is sometimes mistakenly asserted that probable cause is necessary to stop a vehicle for a motor vehicle violation, when in fact only reasonable suspicion is required. *State v. Styles, 362 N.C. 412 (2008).*

B. Arrests: The Legal Standard

An arrest is unreasonable unless there is a factual basis for believing that the person to be arrested has committed a crime. The amount of factual information necessary to justify an arrest is called *probable cause*. Probable cause is determined from the facts known at the time of the arrest, not what is learned after the arrest occurs. *Smith v. Ohio, 494 U.S. 541 (1990).*

1. Definition

The United States Supreme Court has defined probable cause to arrest as: "whether, at the moment the arrest was made, the facts and circumstances within [the officer's] knowledge and of which [the officer] had reasonably trustworthy information were sufficient to warrant a prudent [person] in believing that the [defendant] had committed or was committing an offense." *Beck v. Ohio, 379 U.S. 89, 91 (1964).*

Probable cause requires a showing – considering the totality of the circumstances – that a crime was probably committed and the defendant probably committed it. Thus, the degree of certainty that corresponds to probable cause is fair probability. *Illinois v. Gates, 462 U.S. 213 (1983).* That is, the required amount of proof is more than the reasonable suspicion justification needed to for an investigative stop/detention, but less than other legal evidentiary standards such as preponderance of the evidence, more probable than not, more likely than not, prima facie evidence, clear or convincing evidence, or beyond a reasonable doubt. *State v. Crawford, 125 N.C. App. 279 (1997).* Sometimes individuals who have their criminal cases dismissed, or who are found not guilty, consequently conclude that the initial arrest must have been unlawful. This may be an erroneous conclusion based upon a misunderstanding of the applicable legal standards. The legal standard for an initial arrest, probable cause, is much less than the standard for a criminal conviction, proof beyond a reasonable doubt.

2. Determination of Probable Cause

What constitutes probable cause – like what constitutes reasonable suspicion – cannot be reduced to a set formula of facts and circumstances. Each case is unique. Developing a thorough understanding of the phrase requires examination of appellate court cases and the application of principles found in those cases to everyday situations. *See Ornelas v. United States, 517 U.S. 690 (1996).* The factors a court considers when it determines whether an officer has probable cause to arrest are similar to those used to determine reasonable suspicion to stop. *See generally 2 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment §§3.3 through 3.6 (4th ed. 2004).*

C. Pretextual Investigative Stops and Arrests

Before the United States Supreme Court issued its ruling in *United States v. Whren*, a frequently litigated issue was whether an investigative stop or arrest, even when

appropriately supported by reasonable suspicion or probable cause, was unreasonable under the Fourth Amendment if the officer made the investigative stop or arrest as a pretext to accomplish some other purpose unrelated to the stop or arrest. The Court ruled in *Whren* that stopping a vehicle for a traffic violation, when there is probable cause to believe the traffic violation was committed, does not violate the Fourth Amendment regardless of the officer's motivation for doing so. *517 U.S. 806 (1996); See also State v. McClendon, 350 N.C. 630 (1999); State v. Hamilton, 125 N.C. App. 396 (1997).* Thus, for example, a Fourth Amendment violation does not occur when a drug investigator who rarely enforces minor-traffic violation decides to stop a car speeding at 45 MPH in a 35 MPH zone because the officer knows the driver is a drug trafficker and wants to determine if drugs or drug paraphernalia are in the car. The United States Supreme Court has also applied the *Whren* principle when an officer has probable cause to arrest – that is, the officer's motivation for making the arrest is irrelevant under the Fourth Amendment. *Arkansas v. Sullivan, 532 U.S. 769 (2001).*

D. Length of Time Allowed For An Investigative Stop/Detention

The United States Supreme Court specifically has declined to impose a maximum limit on the length of time allowed for an investigative stop. *United States v. Sharpe, 470 U.S. 675 (1985); United States v. Place, 462 U.S. 696 (1983).* The permissible length of time will depend upon the facts and circumstances of each case, including:

- Whether an officer diligently pursues a means of investigation that is likely to confirm or dispel his or her suspicions quickly – but courts generally should not second-guess whether an officer should have used alternative investigative means that were available
- The suspect's reaction to the officer's stop
- The officer's need to adjust his or her response to what is happening

United States v. Sharpe, 470 U.S. 675 (1985).

E. Interaction With Suspect After Investigative Stop/Detention Completed

An officer's interaction with a suspect may properly be continued beyond the length of time allowed for the initial stop/detention, if certain justifications exist. These include:

- An officer develops probable cause to arrest the suspect
- During the investigative stop an officer develops reasonable suspicion of other criminal activity to permit additional investigation and detention of the suspect (for example, reasonable suspicion of illegal drugs in a vehicle after a traffic stop) or
- The suspect voluntarily remains with the officer. If the suspect voluntarily remains with the officer, a justification (such as reasonable suspicion) for the officer's continuing interaction is no longer required because the suspect is no longer seized under the Fourth Amendment. A court may find that a suspect remained voluntarily based on the totality of the circumstances or because an officer requested and obtained the suspect's consent. An officer is not required to tell the suspect that he or she is free to leave, although that may be a factor the court considers when determining whether the suspect voluntarily remained. In *Ohio v. Robinette, 519 U.S. 33 (1996)*, the Court rejected a

lower court ruling that an officer must advise a lawfully seized defendant that he or she is free to go before consent to search will be recognized as voluntary. It is clear that *Robinette* also would not require such an advisement to prove that a defendant remained voluntarily after a traffic stop had ended.

The voluntariness issue often arises after the completion of a traffic stop (for example, a citation or warning has been given to the driver, no other reason exists to detain the driver, and the officer wants to request a consent search). If, after completion of a traffic stop, the officer asks for consent to search the driver's vehicle while still possessing the driver's license and registration, a court will likely rule that the driver has been illegally detained. *State v. Jackson, 199 N.C. App. 236 (2009).* On the other hand, it would generally be legally permissible to return the driver's license and registration and then request consent to search. *State v. Morocco, 99 N.C. App. 421 (1990).*

F. Ordering Driver and Passengers Out of Vehicle

The United States Supreme Court has ruled that an officer who has lawfully stopped a vehicle may order the driver and passengers out of the vehicle without showing any reason to do so under the Fourth Amendment. *Pennsylvania v. Mimms, 43 U.S. 106 (1977); Maryland v. Wilson, 519 U.S. 408 (1997).* Alternatively, an officer could order the driver and passengers to remain in the vehicle. *Rogala v. District of Columbia, 161 F.3d 44 (D.C. Cir. 1998); United States v. Moorefield, 111 F.3d 10 (3d. Cir. 1997).*

G. Using Drug Dog

The use of a drug dog to sniff a vehicle during a traffic stop or other investigative stop is permissible while the driver is being lawfully detained, or even for a brief time thereafter. *Illinois v. Calles, 543 U.S. 405 (2005); State v. Branch, 177 N.C. App. 104 (2006); State v Brimmer, 187 N.C. App. 451 (2007).* However, if the use of a canine or awaiting the arrival of a dog exceeds a permissible time period under the Fourth Amendment, then reasonable suspicion or consent would be needed to support a suspect's continued detention.

H. Checking Information During Traffic Stop

After stopping a vehicle for a traffic violation, an officer may check the driver's license, vehicle registration, rental agreement if the vehicle is rented, insurance and identity. The officer may also check for outstanding warrants and other criminally related information through the Division of Criminal Information (DCI) and other information sources so long as the check does not unduly prolong the stop. *United States v. Hensley, 469 U.S. 221 (1985); Rousello v. Starling, 128 N.C. App. 439 (1998).*

I. Stops Without Reasonable Suspicion

Law enforcement officers may stop a person under certain circumstances when they do not have reasonable suspicion to believe the person is committing a crime. These situations include service of legal process, public emergencies, execution of a search

warrant on private premises, and information seeking and motor vehicle checkpoints. Regarding the latter, the United States Supreme Court has ruled that a systematic roadblock type of stop to check licenses and registration is permissible if all cars are stopped or if some patterned method of stopping is devised. *Delaware v. Prousse, 440 U.S. 648 (1979).* The United States Supreme Court, in *Michigan Department of State Police v. Sitz,* ruled constitutional an impaired driving checkpoint conducted under guidelines that require officers to stop every vehicle and examine the driver briefly for signs of intoxication; reasonable suspicion is not needed to make these brief stops. *496 U.S. 444(1990).* North Carolina statutory law authorizes the use of checkpoints to determine compliance with Chapter 20 of the North Carolina General Statutes (motor vehicle law). *G.S. 20-16.3A.*

The North Carolina Supreme Court has ruled that an officer may monitor a checkpoint's entrance for vehicles whose drivers may be attempting to avoid the checkpoint and may pursue and stop a vehicle that has turned away from a checkpoint within its perimeters to determine why the vehicle did so. *State v Foreman, 351 N.C. 627 (2000).*

Searches and Seizures of Property

The Fourth Amendment protects people against unreasonable searches and seizures, stating, "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the person or thing to be seized."

A search of a person or property or a seizure of property, to be constitutional, must be reasonable under the Fourth Amendment. Determining the reasonableness of a search or seizure involves balancing the individual's right to be free and left alone by law enforcement officers with the officers' occasional need to interfere with personal freedom and property to investigate crime or to enforce laws.

I. Observations/Actions Which May Not Implicate Fourth Amendment Rights

Not all interactions of officers with people and their property are searches and seizures. Officers conduct a search only when they infringe on a person's expectations of privacy that society recognizes as reasonable. They make a seizure of property only when they interfere in a meaningful way with a person's possessory interests in one's property. *United States v. Jacobsen, 466 U.S. 109 (1984).*

Some observations and actions by officers involve such an insignificant interference with a person's privacy that the officer's conduct does not constitute a search or seizure under the Fourth Amendment and, therefore, needs no justification – the rules governing searches and seizures do not apply.

The United States Supreme Court has said that the Fourth Amendment protects a person's "legitimate expectation of privacy." A legitimate expectation of privacy has two components: (1) a person must have an actual (subjective) expectation of privacy – that is, a person must demonstrate that he or she wants to preserve something as private, and (2) the person's subjective expectation of privacy must be one that society recognizes as reasonable - that is, the person's expectation, viewed objectively, must be justifiable under the circumstances. *Katz v. United States, 389 U.S. 347 (1967); Oliver v. United States, 466 U.S. 170 (1984).*

A. Abandoned Property

The Fourth Amendment does not apply to searching or seizing abandoned property. The reason is because a person cannot assert a violation of a legitimate expectation of privacy if he or she has intentionally relinquished an interest in the property.

1. Personal property is abandoned when it is thrown away. A person who throws away personal property while being approached or pursued by a law enforcement officer has abandoned it under the Fourth Amendment, unless the person abandoned it as a direct result of an officer's illegal search or seizure. *California v. Hodari D., 499 U.S. 621 (1991).*

2. Garbage placed for collection in an area accessible to the public is not subject to an expectation of privacy that society recognizes as reasonable. Law enforcement officers, or sanitation workers acting at their direction, may take and examine garbage without violating the Fourth Amendment in such places as dumpsters near office buildings and apartments and at or near the curbside of a home. *California v. Greenwood, 486 U.S. 35 (1988).* However, an officer may not intrude significantly within the curtilage to take or examine garbage that is located at or near the home. *State v. Rhodes, 151 N.C.App. 208 (2002).* Sanitation workers may, however, remove the garbage there as part of their regular duties and give it to law enforcement officers to examine, and their examination would not violate the Fourth Amendment. *State v. Hauser, 342 N.C. 382 (1995).*
3. A person also abandons personal property when the person affirmatively denies ownership or possessory interest in the property. For example, if a person affirmatively denies ownership of a suitcase at an airport or on a bus, the person has abandoned it, even if the suitcase in fact belongs to that person. *State v. Johnson, 98 N.C.App. 290 (1990).*

B. Open Fields

Curtilage is the area immediately surrounding the home that is so intimately tied to the home itself that it deserves the Fourth Amendment's protection (for example, the customary yard of a home). *Oliver v. United States, 466 U.S. 170 (1984).* The United States Supreme Court has ruled that a person does not have a reasonable expectation of privacy in areas outside the curtilage, such as open fields and woods. *Oliver v. United States, 466 U.S. 170 (1984).* Therefore, when officers are on private property outside the curtilage of a home they are not conducting a search under the Fourth Amendment. The Fourth Amendment does not protect that area even if the area is surrounded by a fence and "No Trespassing" signs. *State v. Prevette, 43 N.C.App. 450 (1979).* Any evidence that (1) officers see in plain view and have probable cause to believe is evidence of a crime, such as marijuana plants, and (2) is outside the curtilage may be seized without a search warrant under the plain view justification. *United States v. Jacobsen, 466 U.S. 109 (1984).* However, evidence the officers see in plain view from outside the curtilage that is located within the curtilage generally may not be seized without a search warrant, exigent circumstances or consent, because officers who enter the curtilage are conducting a search for which Fourth Amendment justification is required. *United States v. Whaley, 781 F.2d 417 (5th Cir. 1986).*

C. Plain View

The United States Supreme Court has stated that "[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." *Katz v. United States, 389 U.S. 347, 351 (1967).* When officers are in a public place or another area, such as an open field, that is not protected by the Fourth Amendment, or if the officers have legally intruded on someone's privacy, such as having entered a home or a vehicle by virtue of a warrant, consent or exigent circumstances, what they see, smell, touch and hear generally is not a search under the Fourth Amendment. *Texas v. Brown, 460 U.S. 730 (1983); United States v. Johns,*

469 U.S. 478 (1985); Minnesota v. Dickerson, 508 U.S. 366 (1993); United States v. Jackson, 588 F2d 1046 (5th Cir. 1979).

II. Search and Seizure By Valid Consent

Although people may have a Fourth Amendment right to privacy in a place or object, they may waive that right if they voluntarily consent to allow law enforcement officers to enter that place or to examine that object.

A. Expression of Willingness for Search to Occur

North Carolina allows consent to be given to officers orally, in writing, or by other means, as long as it communicates the meaning clearly. *State v. Ghaffar, 93 N.C.App. 281 (1989)* [consent need not be in writing]; *State v. Graham, 149 N.C.App. 215 (2002)* [nonverbal conduct intended as an assertion satisfies GS 15A-221(b); when officer asked defendant if she could check his pocket, he stood up and raised his hands away from his body accompanied by gesture that officer understood to mean consent; court ruled that proper consent was obtained]; *State v. Harper, 158 N.C.App. 595 (2003)* [based on an investigation that people in a hotel room were involved with illegal drugs, an officer knocked on the door to the room; the defendant initially opened the door slightly and while continuing to have a conversation with the officer, opened it about halfway; the officer asked the defendant if he could step inside to see if George Davis was in; the defendant then stepped back from the officer and the threshold of the door and opened it almost to its full extension; court ruled that the defendant's nonverbal conduct constituted valid consent]; *United States v. Wilson, 895 F.2d 168 (4th Cir. 1990)* [defendant consented to search of his person when officer asked if he could pat him down and defendant responded by shrugging his shoulders and raising his arms]

B. Voluntariness of Expression

To be valid, consent to search must be made voluntarily. A court examines all the circumstances surrounding the giving of consent to search when it decides whether the consent was in fact voluntary or was obtained by duress or coercion, express or implied. In some situations, consent is clearly involuntary: when a person is beaten or threatened with physical force until he or she consents, or when the person must consent to remove a threat to a family member. A court will look carefully at consent given by a person who is in custody, emotionally disturbed, under the influence of drugs or alcohol, or very young. *United States v. Watson, 423 U.S. 411 (1976); State v. Fincher, 309 N.C. 1 (1983); 4 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment §8.2(e) (4th ed. 2004).* This is not to say that valid consent may not be obtained from such individuals, only that the court will look closely at these factors under the totality of the circumstances.

C. Warnings Before Asking Consent

Both the United States Supreme Court and the North Carolina Supreme Court require only that consent be voluntary. They do not require any specific warning to the person whose property is to be searched. For example, officers need not tell the person that he or she is free to leave, or that he or she has the right to refuse to give

consent. *Schneckloth v. Bustamonte, 412 U.S. 218 (1973); Ohio v. Robinette, 519 U.S. 33 (1996); State v. Powell, 297 N.C. 419 (1979).*

D. Scope of Consent Search

Generally the scope of a consent search is governed by the terms of the consent given to the officers. If officers want to increase the likelihood that a court later will rule that a person's consent to search a house included all buildings on the property (not just the residence), they should make it clear that they are requesting consent also to search outbuildings that are on the premises. However, if they fail to do so and the person does not object while the officers conduct the search, a court will likely rule that the outbuildings were included in the consent, even if they were not specifically mentioned. If a person has consented without limitation to a search of a car, most courts have ruled that containers within the car also may be searched if the object of the search may be found there. *Florida v. Jimeno, 500 U.S. 248 (1991); 4 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment §8.1(c) (4th ed. 2004).* On the other hand, a person's general consent to allow a search for weapons or drugs during a routine traffic stop will ordinarily not permit an intrusive body search, such as removing clothing to see the person's genitals. *State v. Stone, 362 N.C. 50 (2007).* A more specific request will usually be needed. *State v. Neal, 190 N.C.App. (2008).*

A person who consents may limit that consent in any way he or she wants to. Thus, if the person says, "you may search my house everywhere but in the basement," officers must accept that limitation. And the person may stop a search at any point by revoking consent.

While searching with consent, officers may seize any evidence they see in plain view that they have probable cause to believe is evidence of a crime, even if it is not related to the evidence they are looking for.

Sometimes officers will find evidence during a consent search that gives them probable cause to search further without having to rely on the consent-to-search justification. A person's revocation of consent thereafter will not bar a further search. *United States v. Booker, 186 F.3d 1004 (8th Cir. 1999).* For example, suppose officers stop a car to issue a traffic citation and obtain consent to search the interior of the car. If they find cocaine on the floorboard, that generally gives them probable cause to search the rest of the car, including the trunk, for more cocaine. *See State v. Martin, 97 N.C.App. 19 (1990); United States v. Ross, 456 U.S. 798 (1982).* In this situation, the person cannot stop the search by revoking consent because after finding cocaine the officer's justification to search the car no longer rests only on consent.

III. Invasion of Privacy by a Search or Seizure With Sufficient Reason

The law of search and seizure permits officers to interfere with a person's privacy when they have a justification under the Fourth Amendment to do so. And when that justification exists, they do not need the consent of the person whose privacy is affected. Oftentimes, searches and seizures of property in which there is a reasonable expectation

of privacy are searched with a warrant. However, there are many situations in which officers may search for and seize evidence without obtaining a warrant. Though certainly not an exhaustive list, some common exceptions to the warrant requirement are explained below.

A. The Automobile Exception

Rulings of the United States Supreme Court and the North Carolina Supreme Court provide that when officers have probable cause to search a vehicle for evidence of a crime and the vehicle is in a public place, such as on a public street or a privately owned parking lot open to the general public, they may seize the vehicle without a search warrant. *Carroll v. United States, 267 U.S. 132 (1925); Chambers v. Maroney, 399 U.S. 42 (1970; State v. Isleib, 319 N.C. 634 (1987)).* And the officers may then search the vehicle without a search warrant at the place where they seized it or may bring it to a law enforcement facility or other place and search it there without a warrant. *Carroll v. United States, 267 U.S. 132 (1925); Chambers v. Maroney, 399 U.S. 42 (1970).* The United States Supreme Court and the North Carolina Supreme Court have justified this principle essentially because they have decided that people have a lesser expectation of privacy in their vehicles than in their homes. *California v. Carney, 471 U.S. 386 (1985); State v. Isleib, 319 N.C. 634 (1987).* The United States Supreme Court has ruled that the scope of the search is the same as what a judicial official could have authorized with a search warrant. *United States v. Ross, 456 U.S. 798 (1981).* Thus, if there is probable cause to search a car for illegal drugs, officers may make a warrantless search of every place within the car where drugs could be found, including containers such as briefcases, suitcases and bags located inside. *United States v. Ross, 456 U.S. 798 (1981); State v. Parker, 183 N.C. App. 1 (2007).*

B. Exigent Circumstances

Officers may enter a home or other place of residence, absent a warrant or consent, if exigent circumstances exist. Although the United States Supreme Court has not precisely set out the factors in determining when exigent circumstances permit such a search, some factors are:

- Whether officers had an objectively reasonable belief that destruction or removal of evidence was imminent
- The likelihood that violence might be committed against the officers
- The gravity of the offense
- How long it would take to obtain a search warrant

3 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment§6.5 (4th ed. 2004). After officers have entered the house and secured it so that the exigent circumstances that permitted their entry and search no longer exist, they must obtain a search warrant, absent consent, to conduct any further search of the house. Evidence they saw in plain view while properly entering and securing the house may be seized without a warrant or consent.

C. Search Incident to Arrest

A search incident to arrest is justified by the need to prevent the arrested person from using weapons or destroying evidence. However, when officers arrest a person, a

search incident to arrest is legally justified no matter how minor the offense, how harmless the arrestee, and how unlikely it is that the arrestee may have a weapon or may destroy evidence. A search incident to arrest may only be made if the person to be searched has been arrested or is in the process of being arrested.

1. **Scope of Search Incident to Arrest When Arrestee is Not Occupant of a Vehicle**
   The scope of a search incident to arrest, when the arrestee is not an occupant of a vehicle, includes a search of the arrestee's person and the area (and objects in that area) within the arrestee's immediate control. *Chimel v. California, 395 U.S. 752 (1969).*

2. **Scope of Search Incident to Arrest When Arrestee is Occupant of a Vehicle**
   When an occupant of a vehicle is arrested, officers may search the person arrested, and may search the passenger compartment of the vehicle from which he or she was arrested if (1) the arrestee is unsecured and within reaching distance of the passenger compartment when the search is conducted (the Court has stated that this should be a rare case), or (2) it is reasonable to believe that evidence relevant to the crime of arrest might be found in the vehicle. *Arizona v. Gant, 129 S. Ct. 1710 (2009).*

D. Frisks

The United States Supreme Court has ruled that officers may frisk a person when (1) they are confronting the person for a legitimate reason and (2) they have a reasonable suspicion that the person is armed and dangerous. *Terry v. Ohio, 392 U.S. 1 (1968).*Also note that courts permit officers automatically to frisk a person who they reasonably suspect has committed a violent crime (such as robbery, homicide or assault) or a crime associated with violence and the possession of weapons (such as the sale of drugs). *State v. Butler, 331 N.C. 227 (1992).* A court may consider the following factors in determining whether officers had reasonable suspicion to frisk a person:

- The kind of crime for which the person was stopped
- Whether the officer knew-through their own information or information obtained from others-that the person was armed and dangerous
- The behavior of the person
- Whether there was a bulge in the person's clothing
- The person's prior criminal record and history of dangerousness

Adams v. Williams, 407 U.S. 143 (1972); 4 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment §9.6(a) (4th ed. 2004).

If the frisk indicates that a weapon is present, officer's may reach into the suspect's clothing or possessions and seize the weapon. If, during a lawful frisk, an officer develops probable cause to believe, through his or her sense of touch, that the person possesses contraband which is not a weapon, the officer may seize the contraband. *Minnesota v. Dickerson, 508 U.S. 366 (1993).*

Information for this document was excerpted from Arrest, Search and Investigation in North Carolina, 4th ed. Farb, Robert L. UNC School of Government, 2011.

General Order

Durham Police Department
Durham, NC

General Order Number
4004 R-2
Effective Date
April 4, 2014

WARRANTLESS SEARCH AND SEIZURE

INTRODUCTION

It is the policy of the Durham Police Department to conduct all seizures and searches within the parameters of applicable constitutional, federal and state laws. This general order is intended to provide guidance to officers for conducting seizures and searches without a warrant, court process or other court order.

GOVERNING AUTHORITY

The following North Carolina statutes regulate warrantless seizures and searches: §15A-221 through 15A-231; 15A-253; 15A-255; 15A-256; 15A-285; and 15A-401.

INVESTIGATIVE STOPS/DETENTIONS WITH REASONABLE SUSPICION

An officer may conduct an investigative stop or detention if the officer has reasonable suspicion that the person stopped or detained has committed, is committing, or is about to commit a crime. Factors which may be considered in determining whether reasonable suspicion exists include, but are not limited to:

- the officer's observation of conduct that, in light of the officer's training and experience, appears to be criminal;
- Information the officer receives from other officers, citizens or informants;
- The time of day or night;
- Whether the area is a high-crime area;
- The suspect's proximity to a location where a crime was recently committed or to a home, car, or business where criminal activity may be taking place;
- Whether the suspect is a stranger to the area;
- The suspect's reaction to the officer's presence, including flight after seeing the officer;
- The officer's knowledge of the suspect's prior criminal record and activities, if they are relevant to the crime the suspect may be committing;
- The suspect's flight from the scene of a crime.

Investigative stops/detentions are generally limited to that period of time which is reasonably necessary to confirm or dispel the reasonable suspicion which initially justified the stop. Continuing the stop or detention for any prolonged period afterwards requires consent of the party being detained or additional articulable reasonable suspicion. Prolonged periods of detention which are not justified by consent or additional reasonable suspicion may be considered the functional equivalent of an arrest which would then have to be supported by probable cause.

INVESTIGATIVE STOPS/DETENTIONS WITHOUT REASONABLE SUSPICION

- **Driver's License, Vehicle Registration and Impaired-Driving Checks:** Refer to *G.O. 4012 Checking Stations*.

ARRESTS

An officer may make a warrantless arrest of a person when the officer has probable cause to believe that the person has committed a felony. An officer may make a warrantless arrest for a misdemeanor in the circumstances set forth in North Carolina General Statutes. The factors used to establish probable cause are the same as those indicated above, which are used to establish reasonable suspicion. Although a warrantless arrest may be justified, an officer may nonetheless need to obtain an arrest warrant, a search warrant, or both, in order to enter the defendant's or a third party's home to effectuate the arrest.

SEIZURE AND SEARCH BY VALID CONSENT

Officers who may not otherwise have sufficient justification under the Fourth Amendment to conduct a search may nonetheless do so if a person voluntarily consents.

People Who Are Entitled to Give Valid Consent

Officers must obtain consent to search from a person whose reasonable expectation of privacy may be invaded by the proposed search. When two or more people share a reasonable expectation of privacy in the same place, any of the parties may give valid consent, however, when more than one person with equal expectations of privacy is present and one person objects, consent of another party may not be relied upon.

- *Spouses and Roommates*: Generally, a spouse or roommate may give valid consent to search commonly used areas, but may not give valid consent to search an area used exclusively by the other spouse or roommate.

- *Parents and Children*: Generally, parents may consent to a search of a minor child's room unless the child has established exclusive use of and access to the room. A parent does not have the authority to give valid consent to search personal possessions that are within a child's room if the child has established exclusive use of and access to those items. Generally, minor children may not provide valid consent to search their parents' home.

- *Landlords and Tenants, Owners/Managers and Guests*: Only a tenant may consent to a search of leased property. After the tenant has permanently left the property, either voluntarily or through the eviction process, the landlord may provide valid consent. Only a guest of rented real property (such as a hotel or motel) may consent to a search of the property. After the guest has permanently left the property, either voluntarily or by trespass, the owner or person

otherwise in charge of the property may provide valid consent. Only an overnight guest may consent to a search of a room set aside for the exclusive use of the guest. After the guest has permanently abandoned use of the room, either voluntarily or by trespass, the homeowner or person otherwise in charge of the property may provide valid consent to search the room.

- *Employers and Employees*: Employees may consent to a search of their employer's property only if their employment includes authorization to exercise control over the property. Employers may consent to a search of their entire property except for any area that has been set aside for their employees' exclusive use in such a way that employees have a reasonable expectation of privacy in the area to be searched.

- *School Administrators and Students*: Officers should not rely upon the consent of a school administrator in order to search a student's locker, dormitory room, or personal possession.

- *Drivers and Owners of Vehicles:* Either the driver or registered owner of an automobile may consent to a search of the vehicle. If both the driver and owner are present, officers should defer to the wishes of the owner since the owner's expectation of privacy is superior to that of the driver.

Content of a Valid Consent

- *Expression of Willingness:* Consent must be expressed clearly either orally, in writing, or by other means intended to convey a meaning. Officers obtaining written consent shall use the Consent to Search form (Attachment 1).

- *Voluntariness:* Consent must be voluntary and not the result of either express or implied duress or coercion.

- *Warnings:* An officer is not required to provide any specific warnings to a person prior to asking for consent to search.

Scope of a Valid Consent Search

Scope of a consent search is governed by the terms of the consent given. General consent to search a person, however, does not include inspecting the person's genitals. A reasonable person must understand that he or she is agreeing to a strip search for such examination to be within the scope of a consent search. General consent to search a vehicle does not include damaging or dismantling the vehicle. A reasonable person must understand that he or she is agreeing to a search in a manner that would likely damage or dismantle the vehicle in order for such a search to be within the scope of the consent provided.

A person who consents may limit or revoke the consent in any way. To search an area thus barred, an officer would need some other legal justification.

Inventory Form

All property seized pursuant to a consent search shall be inventoried on AOC Form CR-206. A copy shall be provided to the person who consented to the search and, if known, to the owner of the vehicle or premises searched.

EXIGENT CIRCUMSTANCES

A residence may be entered, and persons and property may be searched, without a warrant, if probable cause to search and exigent circumstances exist. Factors which may be considered in determining whether exigent circumstances exist include, but are not limited to:

- Whether an officer had probable cause to obtain a search warrant before the exigency was created;
- Whether an officer had an objectively reasonable belief that destruction or removal of evidence was imminent;
- The likelihood that violence might be committed against the officers;
- The gravity of the offense;
- How long it would take to obtain a search warrant.

After the residence has been entered and secured so that the exigent circumstances no longer exist, a search warrant or valid consent must be obtained before any further search of the house may occur.

PUBLIC EMERGENCIES

An officer may enter buildings, vehicles and other premises; limit or restrict the presence of persons in premises or areas; or exercise control over the property of others when an officer reasonably believes that doing so is urgently necessary to save life, prevent serious bodily harm, or avert or control public catastrophe. This statutory authority may not be used however to justify an action taken to enforce the criminal law or to seize a person or evidence.

PLAIN VIEW

When an officer is in a public place, an area not protected by the Fourth Amendment (such as open fields), or an area in which the officer otherwise has a lawful right to be (such as a home pursuant to valid consent or a warrant), property which the officer sees, smells, touches, tastes, or hears in "plain view" (or other appropriate description when knowledge is gained through a sense other than sight), which the officer has probable cause to believe is evidence of a crime, may be seized without a warrant.

FRISKS

A frisk is a pat-down of a person's outer clothing to determine whether the person has a weapon. Officers may frisk a person when the person has been lawfully stopped, and either the officer can articulate reasonable suspicion that the person is armed and dangerous or the officer has reasonable suspicion to believe the suspect has committed a violent crime or a crime associated with violence and the possession of weapons (such as controlled substance violations). Factors which may be used in determining whether reasonable suspicion to frisk exists, include, but are not limited to:

- The kind of crime for which the person was stopped;
- Whether officers reasonably believed, based upon personal knowledge or information received from others, that the person was armed and dangerous;

- The behavior of the person frisked;
- A bulge in the person's clothing;
- The person's prior criminal record and history of dangerousness.

When an officer has articulable reasonable suspicion to frisk a person, if an officer of the same sex as the suspect is not readily available to perform the frisk, the officer should attempt to frisk the suspect in a manner that minimizes potential accusations of improper touching such as using the back of the officer's hand or having a witness. If the frisk indicates that a weapon is present, officers may make a warrantless seizure of the weapon. If, during a lawful frisk, an officer feels an object that is immediately apparent to be contraband, although not a weapon, the officer may make a warrantless seizure of the evidence. An officer may not turn or manipulate the object during the frisk in order to develop probable cause to believe the object is contraband.

Car Frisks

An officer with reasonable suspicion that an occupant of a vehicle is dangerous and that a weapon is located in the vehicle, rather than on the person, may search the vehicle only to the extent necessary to discover the weapon. The search may not include areas which are not readily accessible, such as a trunk.

SEARCH INCIDENT TO ARREST

A search incident to arrest may be made if the person to be searched is arrested. If an officer decides to issue a citation rather than formally arresting the defendant, a search incident to arrest may not be made. The search may not be remote in time from the arrest.

Scope of Search – Generally

The scope of a search incident to arrest, other than a search made when an occupant of a vehicle is arrested, is limited to a search of the arrestee's person and the area and objects within the arrestee's immediate control, except for locked containers.

Scope of Search – Occupant of a Vehicle

The scope of a search incident to the arrest of an occupant of a vehicle is limited to a search of the arrestee's person and, only if certain circumstances exist, the passenger compartment of the vehicle. The passenger compartment of the vehicle, including any locked or unlocked containers within it, may be searched if the arrestee is unsecured and within reaching distance of the passenger compartment of the vehicle at the time of the search. However, the United States Supreme Court has noted that because officers usually have many means available to secure an arrestee, such as back-up, handcuffs, and patrol cars in which an arrestee may be placed, it should be the rare case in which this situation arises. Otherwise, the passenger compartment of the vehicle, including any locked or unlocked containers within it, may only be searched if the officer reasonably believes that the vehicle contains evidence related to the crime for which the occupant has been arrested.

Every reasonable effort should be made for an officer of the same gender as the arrestee to respond to the scene and conduct the Search Incident to Arrest. This may require assistance from an officer, investigator or supervisor from the arresting officer's unit or another unit or division, or an officer that is currently on a call but can assist within a reasonable amount of time. The arrestee may be required

to wait at the scene of the arrest for a reasonable amount of time for an officer of the same gender to respond.

If all options have been exhausted and there are simply no officers of the same gender available at the time of the arrest, then the arresting officer shall conduct a search incident to arrest prior to transporting the arrestee. The arresting officer shall arrange for a second officer, preferably a supervisor, to witness the search. If possible, the search should be videotaped using an in-car camera. Seizure and search of vehicles with probable cause

If an officer has probable cause to believe a vehicle is itself evidence of a crime or an instrument of a crime, the vehicle may be seized from a public place without a search warrant.

If an officer has probable cause to believe a vehicle contains evidence of a crime and the vehicle is in a public place, the vehicle may be seized without a search warrant, and may be searched without a search warrant at the place where it was seized or at a law enforcement facility or other location. The scope of the warrantless search includes any place within the vehicle that the evidence could reasonably be found, including containers such as suitcases, briefcases, purses and bags.

IMPOUNDMENT AND INVENTORY OF VEHICLES

A vehicle may be impounded and inventoried in accordance with the policies and procedures set forth in *G.O. 4044 Towed and Stored Vehicles*.

PROPERTY SUBJECT TO FORFEITURE

North Carolina statutes authorize the forfeiture of vehicles and other property used in certain criminal activities. Officers must obtain an order from a district or superior court judge to seize property subject to forfeiture unless authorized by statute or other legal justification.

Jose L. Lopez, Sr.
Chief of Police

TRAFFIC STOP REPORT

Agency Name _____ **Date (Month/Day/Year)** _____ **Time** _____

County of Stop _____ **Officer ID Number** _____

City of Stop _____

Part I

Initial Purpose of Traffic Stop *(check only one)*

- ☐ Checkpoint
- ☐ Driving While Impaired
- ☐ Investigation
- ☐ Other Motor Vehicle Violation
- ☐ Safe Movement Violation
- ☐ Seat Belt Violation
- ☐ Speed Limit Violation
- ☐ Stop Light / Sign Violation
- ☐ Vehicle Equipment Violation
- ☐ Vehicle Regulatory Violation

Vehicle Driver Information

Driver's Age _____ **Driver's Race** ☐ White ☐ Black ☐ Native American ☐ Asian ☐ Other

Driver's Sex ☐ Male ☐ Female

Driver's Ethnicity ☐ Non-Hispanic ☐ Hispanic *(Person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish Culture)*

Enforcement Action Taken as a Result of the Traffic Stop *(check only one)*

- ☐ Citation Issued
- ☐ No Action Taken
- ☐ On-View Arrest → If arrest made, who was arrested?
  - ☐ Driver
  - ☐ Passenger(s)
- ☐ Verbal Warning
- ☐ Written Warning

Physical Resistance Encountered

Did Officer(s) encounter any physical resistance from Driver and/or Passenger(s)?	☐ Yes	☐ No
Did Officer(s) engage in the use of force against the Driver and/or Passenger(s)?	☐ Yes	☐ No
Did injuries occur to the Officer(s) as a result of the stop?	☐ Yes	☐ No
Did injuries occur to the Driver as a result of the stop?	☐ Yes	☐ No
Did injuries occur to the Passenger(s) as a result of the stop?	☐ Yes	☐ No

Vehicle/Driver/Passenger(s) Search

Was a search initiated subsequent to the traffic stop? ☐ Yes* ☐ No

***If search was initiated, complete Part II**

Traffic Stop Report

Part II

Type of Search *(check only one)*

☐ Consent ☐ Search Warrant ☐ Probable Cause ☐ Search Incident to Arrest ☐ Protective Frisk

Basis for Search

☐ Erratic/Suspicious Behavior ☐ Observation of Suspected Contraband ☐ Suspicious Movement

☐ Informant's Tip ☐ Other Official Information ☐ Witness Observation

Person(s)/Vehicle Searched

Was the Vehicle Searched?	☐ Yes	☐ No
Was the Driver Searched?	☐ Yes	☐ No
Was a Passenger(s) Searched?	☐ Yes	☐ No
Were the Personal Effects of the Driver and/or Passenger(s) Searched?	☐ Yes	☐ No

Identify the sex, race, and ethnicity of each passenger searched

	Age	Sex		Race					Ethnicity	
		Male	Female	White	Black	Native American	Asian	Other	Hispanic	Non-Hispanic
Passenger 1										
Passenger 2										
Passenger 3										
Passenger 4										

Contraband Found

Contraband found as a result of the search: ☐ None **OR** complete the following:

☐ Drugs _____ Ounces _____ Pounds _____ Dosages _____ Grams _____ Kilos

☐ Alcohol _____ Pints _____ Gallons

☐ Money _____ Dollar Amount

☐ Weapons _____ Number of Weapons

☐ Other _____ Dollar Amount

Property Seized

Property seized as a result of the search: ☐ None **OR** complete the following:

☐ Motor Vehicle ☐ Personal Property ☐ Other Property

Office Use Only	Date	Initials
Reviewed		
Entered		

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC/CPRB Recommendation

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 analyst. Any reports should be made available to City Council for review within a reasonable time.

Issues/Analysis

Under General Order 4074 the Police Department's traffic stop data is currently reviewed annually and a report is provided to the Chief of Police. The Department's 2013 report which should have been completed this spring was not completed in a timely manner and is currently being compiled. Up to this point, the Department indicates it has not reviewed individual officer data because: (1) the Department has firm and clear policies prohibiting bias-based policing and other constitutional rights violations, (2) the overall data did not suggest a need for in-depth review of individual officers, (3) an in-depth review of an officer's traffic stops could already be triggered by a complaint of bias-based misconduct, and (4) additional substantive and pertinent information was not collected that would allow for an accurate assessment of the possible reason(s) for any irregularities.

The Department acknowledges that more frequent and in-depth monitoring of the data and potential trends or individual irregularities is appropriate. Up to this point, reviews of traffic stop data have been cumulative and representative of the Department as a whole, it lacked information that would allow for an in-depth analysis to determine a reasons for disparities that appear in the data. The Department has modified software features that now allow additional data (time of day and location) to be captured in the hopes that a more thorough analysis of irregularities can be conducted. The collection of this additional data began August 1, 2014.

While reviewing the data on a quarterly frequency may appear desirous it is not efficient to look for trends on a three-month time horizon and would become burdensome for District Captains and other lower supervisory chain of command. The Department does agree, however, that in light of the unexplained disparities in the data and other reasons, that General Order 4074 should be modified to require the Staff Inspections Sergeant to produce a bi-annual report of traffic stop data collected, including collecting officer's name. Any significant disparities will be forwarded to the chain of command, including the command staff, for immediate review. Should the disparity remain unexplainable, then a formal investigation may be initiated and should that investigation reveal a violation of law or policy. Additional technical support and analysis will be available to support the Department and Command Staff on an as-needed basis.

Legal Analysis

N/A

Peer Review Results

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Is stop/search data evaluated as a component of officer job performance appraisals?	No	No	Yes	No	No	No	No
If so, how are standards established?		Not narrowly defined in the job results but would be more general in the overall evaluation unless a specific concern needed to be addressed.	And to clarify these questions, in NC all traffic stops must be documented but other encounters do not. We can evaluate our field interrogations based on information in our records management systems.				
Does your police department use any measures or benchmarks to monitor racial disparity in stops and searches?	Yes	Yes	Yes	No	Yes	Yes	No
If so, what measures/bench marks are in use?	We utilize the state data that officers enter for racial profiling on traffic stops. Annual review regarding motor vehicle stops/searches for reporting submitted to State.	1.8.6 SUPERVISION AND ACCOUNTABILITY (excerpt from policy)	Review of rates against other agencies is available on line. Also, we create an annual report that measures complaints against employees, nature of the complaint, etc. which allows us to identify trends.		Biased-Based Profiling forms are completed after traffic stops.	Traffic stop data forms are completed .	

Best Practices Review

Not identified.

Management Recommendation

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.

Status

Administration concurs. General Order to be revised no later than October 1, 2014.

General Order

Durham Police Department
Durham, NC

General Order Number
4074 R-2
Effective Date
September 28, 2011

BIAS BASED POLICING

INTRODUCTION

The Durham Police Department will be fair and impartial in law enforcement. The Department believes that the use of stereotypes is inconsistent with effective policing and that the mere appearance of such is harmful to both this Department and the community we serve.

Officers of the Durham Police Department shall treat all people with whom they have contact equally and without regard to their race, gender, ethnicity, religion, age, citizenship, sexual orientation, political persuasion or any other stereotype. No stereotype shall be the motivation for the decision to initiate any police activity. Such activity constitutes profiling and is expressly prohibited.

DEFINITIONS

Bias Based Profiling: Bias-based profiling includes practices by individual members, managerial standards and departmental program administration, both intentional and non-intentional, that incorporate prejudicial judgments based on sex, race, ethnicity, gender, sexual orientation, economic status, religious or political beliefs, or age.

GUIDELINES

- Officers **may not** engage in bias-based profiling when establishing either reasonable suspicion or probable cause or as a motivation for field contacts and/or consent searches.
- Members **may** use race or other descriptive characteristics to determine whether a person matches a specific description of a particular suspect.
- Members will treat all people contacted with the respect and dignity. Members will refrain from using stereotypical phrases or terms.
- Members will report all infractions by co-workers to their supervisor immediately. If the supervisor is the subject of the infraction, going directly to the next level is permitted.
- Supervisors shall record and notify their chain of command and the Professional Standards Division of any reports or infractions related to bias-based profiling or other forms of discrimination.

VEHICLE STOP FORMS

North Carolina General Statute§ 114-10.01 requires that the Department keep statistics on traffic stops. All officers who make a vehicle stop must accurately complete an SBI-122 form (Traffic Stop Report) and turn it in to the Records Unit by the end of their shift. An electronic version of this form may also be used, if available. The EIS unit shall issue each officer an identification number to be used on each of these reports in the block titled "Officer ID". In addition, if using the paper form of this report, then officers must write their name and employee number at the bottom of the page.

For vehicles stopped at checking stations, an SBI-122 form does not need to be completed, unless one of the following takes place:

- An arrest occurs; or
- A citation or warning ticket is issued; or
- A verbal warning is given; or
- Contraband is found; or
- Any property is seized; or
- A search of the vehicle or any of its occupants occurs; or
- Physical resistance by an occupant of the vehicle is encountered; or
- Any injury occurs to an occupant of the vehicle; or
- Force is used against any occupant of the vehicle; or
- An investigation occurs as a result of the checking station stop.

TRAINING

The Training Division will provide profile related training to initial recruits and annual in-service training to all officers in order to make sure that they understand and comply with this General Order.

ANNUAL REVIEW

The Professional Standards Division will conduct a documented annual review of agency practices related to bias based profiling and include any community concerns that have arisen that year. The review will determine whether patterns exist within the agency or possible additional training would be necessary. This administrative review will be forwarded to the Chief of Police.

Jose L. Lopez, Sr.
Chief of Police

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

HRC 13: We recommend that the Durham Police Department collaborate with a national independent training organization approved by the City Manager and the City Council, to create and implement a racial equity training program for Durham police officers.

Issues/Analysis

The literature on racial equity training and the marketing of the provision of this training maintains a constant premise. All human beings are subject to bias at some level. It is not uncommon that such biases may be unconscious. It is not desirable in organizations for personal biases to control decision making. It is possible to craft interventions for individuals and organizations so that personal biases can be trumped by controlled behavior based on the efficacy of the intervention.

Members of the FADE Coalition and the Southern Coalition for Social Justice met with the Durham Police Department (DPD) in November 2013 to present their concerns about racial disparity and implicit racial bias in traffic stops and drug arrests. In light of the data presented, it was recommended to DPD that racial equity training be considered. Information was provided to DPD on organizations that provide this training. While not agreeing with the Coalition's main premise, DPD acknowledged a racial disparity in some enforcement activities. DPD agreed that this type of training could be beneficial and in December 2013, began follow up and additional research on racial equity training.

By early 2014, DPD made a decision to pursue a racial equity training program and curriculum entitled *Fair and Impartial Policing*. The program's principal author is Dr. Lorie Fridell who is currently Graduate Director of the Department of Criminology at the University of South Florida. Prior to this appointment, she was Research Director for the national Police Executive Research Forum. Dr. Fridell has authored several publications on the subject of bias based policing and police statistical data analysis. She is considered to be a national expert on the topic of racial bias policing. *Fair and Impartial Policing* is one of the top selected programs in the country owing to its research on bias behaviors and the applicability to policing. It contains curriculum elements designed for the executive/command staff, for the middle management/supervisory staff and for patrol staff. It also includes a train-the-trainer program so that departments can sustain the program. It is a program that is cited in information provided by the Southern Coalition for Social Justice.

The curriculum for *Fair and Impartial Policing* is also currently being used in Raleigh, Fayetteville and Greensboro.

Legal Analysis

N/A

Peer Review Results

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Does your police department provide training on racial equity, mental health, and/or crisis intervention (CIT)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Racial equity training is provided.	Yes	Yes	Yes	Yes	Yes	Yes	No
Racial equity training is provided during academy/new recruit training.	Yes	No	Yes	Yes	Yes	Yes	No
Racial equity training is mandatory for at least some positions.	Yes	No	No	Yes	Yes	Yes	No

Best Practices Review

The resources that are available for racial equity training around the country are robust. There are private sector, non-profit and university based organizations that provide this type of training for organizations of all types with common curricula. It could be stated that this type of training with curricula designed strictly for police organizations is relatively emergent. Two of the most prominent of these programs are the Center for Policing Equity at UCLA which launched formally in 2008, and the

Fair and Impartial Policing Program operating out of the University of South Florida which was created in 2009.

Management Recommendation

Durham has already begun the implementation of *Fair and Impartial Policing*. Accompanying this information is a memorandum from Chief Lopez that describes the program, DPD's involvement, and plans for further implementation. Also included is literature about the program itself. The administration recommends continuing with the full implementation of the program.

Status

Administration concurs. The plans for implementing the *Fair and Impartial Policing* curriculum are not final. DPD plans to begin the program fully in 2014. Thus far, the Department's training commander and three other officers have completed the train-the-trainer course. This year's Academy #39 will be the first new recruit class to complete the course in August 2014. Dates have been confirmed with Dr. Fridell's team for the first week of October for all of the captains and lieutenants, along with a majority of the sergeants and corporals to go through the actual training course. The Department is working with Dr. Fridell to secure dates for the course to be offered to the executive and command staff along with the remainder of the sergeants and corporals. The training will be mandatory for all Durham Police officers and will be a permanent offering for all new recruits before they report for field training. The Department training staff will coordinate all aspects of the training and their work in this area has already begun.

Fair and Impartial Policing

Introduction

Over the past decade, police personnel, researchers, community leaders and other stakeholders have engaged in a national discussion about policing and bias; biases based on race and ethnicity have received the most attention. Much of the national discussion, however, has been based on outdated notions of how bias manifests in our society.

Early researchers on the psychology of bias reported that prejudice was based on animus toward groups and that a person with prejudice was aware of it. Bias with these characteristics is now known as "explicit bias"; racism is an example. More recent research on this topic provides us with a fuller understanding of how prejudice is manifested. Social psychologists report that bias has changed in our society. As one scientist proclaimed, "Modern prejudice is not your grandparents' prejudice" (Fiske, 2008: 14). What these scientists have determined—through voluminous research on this topic—is that bias today is less likely to manifest as explicit bias and more likely to manifest as "implicit" (or "unconscious") bias. Social psychologists have shown that implicit bias can impact what people perceive and do. It works below consciousness and manifests even in people who consciously hold non-prejudiced attitudes.

Bias starts with our automatic tendency to categorize individuals. We categorize individuals and objects to make sense of the world, which includes categorizing people we don't know according to group membership. We then attribute to these individuals the stereotypes associated with their group. This does not require animus; it requires only *knowledge* of the stereotype. Implicit bias, like explicit bias, can produce discriminatory actions.

Research has examined implicit biases linked to ethnicity and race, gender, social class, sexual orientation, religion, body shape, age, and so forth. It has examined the manifestations of bias among members of various professional groups, such as doctors, other health professionals, medical students, educators, prosecutors, and law enforcement.

In policing, implicit bias might lead the line officer to automatically perceive crime in the making when she observes two young Hispanic males driving in an all-Caucasian neighborhood. It may manifest among agency command staff who decide (without crime-relevant evidence) that the forthcoming gathering of African American college students bodes trouble, whereas the forthcoming gathering of white undergraduates does not. Moving beyond racial and ethnic biases, implicit bias might lead an officer to be consistently "over vigilant" with males and low income individuals and "under vigilant" with female subjects or people of means. Where there is a crash with two different versions of what happened, implicit bias might lead the officer to believe the Caucasian man in the white shirt and tie driving the BMW as opposed to the Hispanic man in jeans and a pick-up truck.

So the bad news is that prejudice remains widespread and manifests below consciousness, even in those of us who eschew, at a conscious level, prejudices and stereotypes. The good news comes from the large body of research that has identified how individuals can reduce their implicit biases or, at least, ensure that their implicit biases do not affect their behavior. Scientists have shown that implicit biases can be reduced through positive contact with stereotyped groups and through counter-stereotyping, whereby individuals are exposed to information that is the opposite of the cultural stereotypes about the group. Another set of remedies doesn't require that we rid ourselves of the implicit biases that took a lifetime to develop. The social psychologists have shown that, with information and motivation, people can implement "controlled" (unbiased) behavioral responses that override automatic (discrimination-promoting) associations and biases.

Fair and Impartial Policing Training Programs

Around the country, traditional racial-profiling training programs have not been based on science and have reflected outdated understandings about prejudice. Many such training programs have conveyed the message, "stop being prejudiced," with an emphasis on reducing animus toward stereotyped groups. From the science, we now know that this message is ill-suited for most individuals in modern society, including most individuals in policing, who may not have explicit prejudices. Further and more important, individuals receiving such messages can be offended—producing a backlash against these efforts.

The Fair and Impartial Policing (FIP) training program applies the modern science of bias to policing; it trains officers on the effect of unconscious bias and gives them the information and skills they need to reduce and manage their biases. The curricula address, not just racial/ethnic bias, but biases based on other factors, such as gender, sexual orientation, religion, socio-economic status and so forth. These curricula are founded on the following fundamental principles:

- All people, even well-intentioned people, have biases
- Having biases is normal to human functioning
- Biases are often implicit or unconscious, thus influencing choices and actions without conscious thinking or decision-making
- Officers can learn skills to not allow their normal biases to control their behavior, to increase their own safety, and to continually ensure effective and just police practice
- Supervisors can learn skills to identify biased behavior in their direct reports and take corrective actions when they detect biased policing
- Law enforcement executives and their command-level staff can implement a comprehensive agency program to produce fair and impartial policing.

There are five Fair and Impartial Policing curricula (three of which were developed pursuant to cooperative agreements with the U.S. Department of Justice, Office of Community Oriented Policing Services). The curricula, all based on the science of bias, are customized for these audiences:

- Academy Recruits and/or In-Service Patrol Officers
- First-Line Supervisors
- Mid-Managers
- Command-level Personnel (or Command Personnel and Community Leaders)
- Law Enforcement Trainers

These five training programs fill a significant gap in resources for agencies that are attempting to address the national problem of biased policing (including, but not limited to, *racially* biased policing). The project to develop these curricula greatly benefited from the expertise of a distinguished national Curriculum Design Team (CDT) comprised of experts in the area of biased policing, police executives, first-line supervisors, officers, and community stakeholders. Additionally, and importantly, social psychologists from around the nation who conduct the research on human biases were members of this team.

All five training programs have been implemented with the target audiences (recruits/patrol officers, first line supervisors, mid-level managers, command staff and law enforcement trainers) in multiple and diverse training environments. The evaluations are consistently very positive.

Both the **recruit academy/patrol officers'** and the **first-line supervisors'** curricula consist of three modules:

- Module 1: Understanding Human Bias
- Module 2: The Impact of Biased Policing on Community Members and the Department
- Module 3: Skills for Fair, Impartial, and Effective Policing

The first two modules are very similar in the two curricula–merely customized in language and exercises for the target populations. The third module of each curriculum teaches the specific skills needed by that audience.

A 6-hour training program for **recruits in the academy or in-service patrol officers** helps these individuals to:

- Understand that even well-intentioned people have biases;
- Understand how implicit biases impact on what we *perceive/see* and can (unless prevented) impact on what we *do;*
- Understand that fair and impartial policing leads to *just, safe and effective policing;* and,
- Use tools that help him/her (1) recognize his/her conscious and implicit biases, and (2) implement "controlled" (unbiased) behavioral responses.

Overwhelmingly *recruit participants* report that the information opens their eyes and *will* absolutely help them in their day-to-day work. Feedback on the exercises and videos range from "great" to "awesome." One academy participant was returning to the job after being off it for several years; he wrote, "I had [been impacted by stereotypes/biases] as an officer but did not know it until now. I could have used you guys back in 1995!" Other comments from recruit and patrol officer attendees include:

- *"I am going to work in a very diverse environment and feel this training has helped me learn how to attempt to be unbiased towards situations I may encounter."*
- *"I will go into each situation with this training in the back of my head."*
- *"Absolutely (I will be able to apply the information and skills to my job). I felt that all the information was related to our jobs and how society relates to these issues as well."*
- *"We were told we were going to 'racial profiling' class all day and, to be honest, that already put me off–thinking it was going to be the same stuff we always get. I was very, very surprised and happy to receive this training today."*
- *"I learned what 'implicit bias' means and understand its effects on me, decisions I make and community perceptions of officers."*
- *"Well presented. Most relevant discussions on topic of race relations I have heard in 14 years."*
- *"(Strengths included) addressing everyone's biases and not making it seem like a white guilt issue."*

The 5-hour training for **first-line supervisors** (e.g., sergeants) starts with the two modules described above and then:

- Addresses how to identify subordinates who may be acting in a biased manner–including those well-meaning officers whose biased behavior may not be consciously produced;
- Provides guidance to supervisors on how they should respond to officers who exhibit biased policing behaviors;
- Challenges supervisors to think about how bias might manifest in their own behavior; and
- Provides guidance on how to speak about bias to individuals (e.g., officers, individual community members) and community groups and the media, including routine and crisis communication messages.

Identifying the appropriate supervisory response to biased policing can be challenging. Not only is biased behavior very difficult to prove, but, for the officers whose biased behavior is not intentional or malicious, "disciplinary" action would be inappropriate. Since, in many instances, there will only be "indications" and not "proof," it will be important to convey when and how supervisors can intervene to stop what appears to be inappropriate conduct while keeping in mind the ambiguous nature of the evidence as well as the sensitive nature of the issue.

First-line supervisors who have participated in the training report that they now have a new perspective for thinking about how bias (not just racial bias) might manifest in policing. The comments indicate that they emerge believing (some expressing surprise) that biased behavior can be unintentional and can manifest even in well-intentioned subordinates. Overwhelmingly, the participants report that they will be able to apply the information and skills from the training into their daily job as a supervisor. They report acquiring new tools for identifying when bias might be manifesting in their supervisees and new tools for intervening when they have concerns about subordinate behavior.

Comments include:

- *"I will better recognize bias and be able to address it with officers."*
- *"Examples presented made me reflect on my personal behavior as well as behavior of my subordinates."*
- *"(I learned) how to deal with biases that we all have."*
- *"I will use this training and teach my squad."*
- *"Helped me realize my own biases and will help me to better train those officers working under my supervision."*
- *"One of the best classes of this type I have attended."*
- *"(Some of the most useful info included) the fact that bias can occur and the officer doesn't even realize it."*
- *"Good information that I didn't know and great knowledge gained to take back to the people under me."*

Due to popular demand, there is now a **mid-managers'** curriculum targeted toward individuals who are above the rank of first-line supervisor and below what might be considered "command staff" in an agency (e.g., Captains). The 6-hour training combines elements from the command-level and first-line supervisor curricula; it:

- introduces the trainees to the science of bias, including the science underlying mechanisms for reducing/managing biases;
- helps mid-managers identify and intervene with subordinates who may be acting in a biased manner;
- challenges mid-level managers to think about how bias might manifest in their own behavior;
- provides guidance on how to speak about bias to individuals (e.g., sergeants, officers, individual community members) and groups/media; and

- Introduces the attendees to the elements of a comprehensive agency program to produce fair and impartial policing.

Mid-managers who participated in the training provided very strong evaluations of the course. Comments include:

- *The course provided a great deal of information on bias and was presented in a manner that made it easy to understand and apply.*
- *An outstanding class teaching about fair and impartial policing and biased policing. Included the science behind it.*
- *The strength of the course content and presentation were the examples of the results of studies that supported the concepts.*
- *Provided a clear definition of 'biased policing'; gives us a starting point to build on and implement the fair and impartial policing policy.*
- *Presented in lay terms that was understandable.*

There is a 1.5-day training program for the **agency executive and his/her command-level staff**. An alternative form is to hold this training with both command-level personnel *and community leaders*. This training covers the science of bias, its implications for policing and the elements of a comprehensive agency program to promote fair and impartial policing, which includes assessments and reform in the realms of policy, recruitment and hiring, training, supervision and accountability, leadership, measurement, and outreach to diverse communities. Agency (and community) leaders exit the training with an action plan to implement a comprehensive program to promote fair and impartial policing.

This training has received very strong reviews from both police and community leaders. Some comments include:

- *"It was very interactive and made me think. The resources and facts/examples were amazing."*
- *"Provided all views of a complex problem that will bring all sides to the table for worthy, meaningful conversations."*
- *"I am leaving the class with a new perspective on my own views and beliefs. I have a new awareness of bias-based policing within my own agency. The presentation of scientific data provided me with a more convincing argument that supported the existence of unintentional, but widespread racial bias, which I was typically quick to dismiss."*
- *"I obtained new ideas from the other students as well as from the instructor."*
- *"(Instructor) aggressively addressed difficult topics with facts and experience."*

Additional comments reflecting the value of including community stakeholders include:

- *"Having law enforcement and community stakeholders in the room made for interactive and thought-provoking discussions."*
- *"Discussions enabled community and law enforcement to appreciate each other's views."*

A 3-day **Train-the-Trainer** program is designed to enable law enforcement instructors to implement both the recruit academy/patrol officers' and the first-line supervisors' training programs. This training "walks" participants through both the content and the training methodologies used throughout the Fair and Impartial Policing curriculums and provides opportunities for all participants to "practice" teaching the content. FIP instructors provide technical assistance as participants prepare their "teach-back" presentations and critical assessments of participants' training skills and methods. Upon completion of the TOT (with some follow-up self-study and practice), participants are able to implement the FIP curriculums to personnel within their own agencies or academies. TOT participants will be able to:

- Understand the social-psychological research on implicit bias and its implications for both patrol officers' and first-line supervisors' actions
- Discuss the impact of policing on community members and the law enforcement organization
- Discuss the knowledge and skills that patrol officers and supervisors need to promote fair and impartial policing
- Demonstrate proficiency in using appropriate adult learning methods to support the training objectives and effectively presenting and debriefing problem-based case scenarios.

Comments from previous TOT participants:

- *"Excellent training—I cannot wait to present the material."*
- *"Critical area of training for police. Use of scientific approach is great."*
- *"Excellent blend of lecture, facilitation, team teaching, group exercises, and teach-back."*
- *"I enjoyed the class and look forward to instructing the classes."*
- *"Excellent training! The teach-backs were critically important."*

Conclusions

Although still relative new, the fair and impartial policing perspective is getting a lot of attention and acquiring "converts" from around the nation. It was highlighted in an article in the *Police Chief* in November 2011 (Gove 2011) and twice in the *Royal Canadian Mounted Police Gazette* (Fridell 2010, Laszlo 2012). Entire states are adopting the FIP perspective, including Kansas, Rhode Island, Wisconsin and South Carolina. (There is even reference to the FIP perspective in the Kansas statutes.) The Special Litigation Unit (SLU) of the USDOJ, which investigates agencies that are suspected of engaging in unconstitutional practices, including biased policing, is promoting training that addresses how unconscious or "implicit" biases impact on even well-meaning officers. The US DOJ COPS Office is providing FIP training to agencies *at risk* for SLU investigations with the hopes that those agencies can get on track to produce fair and impartial policing and avoid SLU intervention.

The science-based FIP perspective is wholly consistent with the law enforcement commitment to *evidence-based policing*. It rejects our traditional way of thinking about this national issue—a "thinking" that has overused the "racist" label, applying it to even the overwhelming number of well-meaning law enforcement professionals who, in fact, aspire to provide fair and just policing in the communities they serve. Both law enforcement professionals and concerned community

stakeholders can come together around this common perspective and its associated plans of action for police at all levels of the department.

Trainings: Lengths and Costs

The lengths and costs for each are: (1) Command 1.5 days, $4700 plus travel costs for one trainer; (2) mid-level managers 6 hours, $2000 plus travel costs for one trainer; (3) first line supervisors 5 hours, $3200 plus travel for two trainers; (4) patrol officers 6 hours; $3200 plus travel for two trainers; (5) train-the-trainer 2.7 days, $15,000 plus travel for 3 trainers (estimated at $3000 to $4000 depending on location).

For more information on Fair and Impartial Policing and the associated training programs, go to www.fairandimpartialpolicing.com or contact Lorie Fridell at lfridell@fairandimpartialpolicing.com

Bio

Dr. Lorie, Fridell, the former Director of Research at the Police Executive Research Forum (PERF), is a national expert on racially biased policing. She has authored and co-authored a number of chapters and books on the topic. While at PERF she co-authored with colleagues *Racially Biased Policing: A Principled Response*, which guides law enforcement executives on how to respond to the issues of racially biased policing and the perceptions of its practice. Concerned about the very high expectations that some stakeholders have with regard to data collected on police stops, she wrote *By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops* and the companion book, *Understanding Race Data from Vehicle Stops: A Stakeholders' Guide.* Dr. Fridell is a keynote speaker at conferences on this important topic and has been invited on a number of occasions to speak to various chiefs/sheriffs associations and police accountability groups around the country and in Canada. She has trained for and/or consulted with a number of agencies/entities including the Chicago PD, San Francisco PD, Los Angeles PD, Toronto Police Services, Austin PD, Seattle PD, Massachusetts Chiefs Association, Piedmont PD, Oakland PD, Berkeley PD, La Crosse PD, Madison PD, Prince William County PD, Kansas Racial Profiling Task Force, Wisconsin Bureau of Justice Assistance, Institute for Law and Justice, Rhode Island Chiefs' Association, Wisconsin Chiefs' Association, and RAND Inc., to name a few. Dr. Fridell is an Associate Professor of Criminology at the University of South Florida in Tampa. Her training abilities are indicated by her five university-level teaching awards.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

HRC 14: We recommend that racial equity, mental health, and crisis intervention training be made part of new recruit training.

Issues/Analysis

In the deliberations that led to this recommendation, the HRC recommended that training in these three topic areas be made available to all Durham Police Department (DPD) officers to the extent possible. It was further expressed that as the training in these areas develops, it also should be offered to new recruits.

As covered in HRC Recommendation 13, a racial equity training program has been instituted by DPD and is now a part of the new recruit training program as well. Additionally, the basic law enforcement training curriculum for new recruits includes a segment on mental health issues. The purpose is to provide new officers with a fundamental opportunity to discern threatening situations created by criminal intent from those created by mental illness and to de-escalate such situations accordingly. This would include knowing how and when to call on specific additional resources.

DPD does provide crisis intervention training (CIT) and 180 officers on the force have completed the offering. The Department does not offer CIT to new recruits. The prevailing rationale is that the far more intense training on this very complex subject should be provided to officers whose experience base in the intricacies of effective policing is beyond the stage of new recruit. The CIT course is a voluntary one. But the Department does make assignments for CIT for the purpose of maintaining a minimum of two CIT officers available as a resource in every patrol squad. The CIT program is supported by Alliance Behavioral Healthcare in training and in operations.

Legal Analysis

N/A

Peer Review Results

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Does your police department provide training on racial equity, mental health, and/or crisis intervention (CIT)?	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Racial Equity Training is...	Provided	Yes	Yes	Yes	Yes	Yes	Yes	No
	Provided during academy/new recruit training	Yes	No	Yes	Yes	Yes	Yes	No
	Mandatory for at least some positions	Yes	No	No	Yes	Yes	Yes	No
Mental Health Training is...	Provided	Yes	Yes	Yes	Yes	Yes	Yes	No
	Provided during academy/new recruit training	Yes	Yes	Yes	Yes	Yes	Yes	No
	Mandatory for at least some positions	Yes	No	Yes	Yes	Yes	Yes	No
Crisis Intervention Training is...	Provided	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Provided during academy/new recruit training	Yes	Yes	No	No	No	Yes	No
	Mandatory for at least some positions	Yes	No	Yes	No	No	No	No

Best Practices Review

A cursory literature search does not yield specific information on whether CIT for new recruits is common. A conclusion might be drawn from this information reveals that most often, CIT is either voluntary or positions that are recruited for from the ranks of department. As such, CIT for new recruits is done, but is probably in the category of not being a best practice.
Mental health training is a very common program offering in most basic law enforcement training curricula in academies across the country.

Management Recommendation

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.

Status

These practices are on-going as described, including the recently launched racial equity program for new recruits.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

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.

Issues/Analysis

All Durham police officers receive a block of instruction in Basic Law Enforcement Training (BLET) dealing with calls involving mental illness. Additionally, there is a 40-hour comprehensive training block offered in Durham County for Crisis Intervention Training (CIT). This training is based on a national training model that is employed throughout the country. Currently, 71 out of a possible 221 total frontline police officers in the Durham Police Department have received 40 hours of specialized crisis intervention training. In addition to frontline officers, 109 other DPD personnel have received this 40 hour block of training. This specialized training emphasizes mental health related topics, crisis resolution skills, de-escalation training, and access to community-based services. An overview of the subjects covered in Durham's 40 hour CIT is available upon request.

In addition to training offered to patrol personnel, the department employs one CIT investigator who does follow up and service connection for clients identified by frontline officers. The Department has also implemented a grant to fund a care coordinator in partnership with the Alliance for Behavioral Health. This employee triages incoming reports by reviewing mental health records, checking for history of substance abuse, making direct contact with clients (in conjunction with the CIT investigator) and reviewing insurance information to assist clients in receiving services.

Legal Analysis

N/A

Peer Review Results

The provision of mental health and crisis intervention training across the peer cities in our survey showed no discernible consensus. Six out of seven respondents reported that mental health training is included in the curriculum for new officers. Three out of seven respondents reported that crisis intervention training is included in the curriculum for new officers. Five respondents reported that mental health training is mandatory for specific staff, while two respondents reported that crisis intervention training was also mandatory for specific staff.

Best Practices Review

The 40-hour crisis intervention training program utilized by the Durham Police Department is based on a national model that is widely implemented across the country. TheDepartment reports that the

nationally recommended standard for the percentage of officers trained in CIT should be 25% or greater. Currently, 32% of Durham's officers have this training, not including officers in non-patrol positions.

Management Recommendation

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 Durham Police Department 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.

Status

Ongoing.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

HRC 16: We recommend the Durham Police Department job performance evaluation include a review of stop/search data for irregularities in conduct and policy.

Issues/Analysis

The Durham Police Department (DPD) manages individual employee performance pursuant to the City's Human Resources *Performance Management Policy-303 (HRM-303).* The City's Performance Management System (*Revised July 2012*) supports the implementation of the policy. Integral to this system is the planning, observation, evaluation, and development of employee job performance. The system requires the identification of job responsibilities and job expectations, coaching (feedback) sessions between employees and supervisors throughout the review period, and a formal performance evaluation that documents performance in relation to established expectations at the end of the review period. Police Department supervisors annually evaluate the employee's performance on the employee's anniversary date, and conduct three formal quarterly coaching (feedback) sessions between annual evaluations.

The City of Durham's performance management system can accommodate a wide range of performance standards and job expectations for an individual employee, including the review of stop/search data. However, the challenge is establishing both an efficient and effective way to incorporate data collected into a system that identifies and detects undesirable or irregular behavior. Development or enhancement of data collection systems can often require a significant commitment of resources both in technology and effort as well as complex processes for determining thresholds for alerts and intervention.

DPD reports the existence of an early intervention system that has an effective date of April 2004 through *Police Department General Order 1050.* This is the Department's early intervention program, and it is connected to the overall management of employee performance. The purpose of the Professional Excellence Program is to identify and monitor patterns of certain actions that require administrative report and investigation to ensure compliance with Departmental policy. Program criteria currently exist in the program including "use of force reports, vehicle pursuit reports, complaints of misconduct, and any discernible pattern of repeated similar complaint." Per the Police Department's most recent report in 2012, twenty-one (21) agency members were identified by the program criteria and referred for review. The program requires an annual evaluation. One component of the annual evaluation is a recommendation for additions, subtractions, or changes in program reporting criteria.

Legal Analysis

N/A

Peer Review Results

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Is stop/search data evaluated as a component of officer job performance appraisals?	No	No	Yes	No	No	No	No
If so, how are standards established?		Not narrowly defined in the job results but would be more general in the overall evaluation unless a specific concern needed to be addressed.	And to clarify these questions, in NC all traffic stops must be documented but other encounters do not. We can evaluate our field interrogations based on information in our records management systems.				

Best Practices Review

A limited review of research projects and case studies found in the International Association of Chiefs of Police National Law Enforcement Policy Center, U. S. Department of Justice, and the Commission on Accreditation of Law Enforcement Agencies, Inc. provided support for the position that the implementation and use of a well-managed early intervention system is an effective strategy for improving accountability and holding individual officers responsible for their discretionary actions in the field. These systems are data driven and allow managers to identify officers who have recurring, problematic behavior and to intervene through counseling and additional training. The research suggests it is a more efficient and holistic approach to identifying what is often a small number of individuals who may be responsible for a large share of the actions that are perceived to be problematic in an agency. These systems, when well designed and well

managed, also help provide an overall picture of an officer's policing activities and can provide data and context when questions are raised about disparities that are associated with factors other than officer bias.

Management Recommendation

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.

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.

After this review and update of the system, the data generated should be used in both the management and development of employees through performance feedback (quarterly coaching sessions and annual performance reviews.) 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."

Status

The evaluation of the Professional Excellence Program was completed on January 16, 2014 for 2013. The recommendation will be included in the 2014 evaluation.

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

HRC 17: We recommend a yearly training needs analysis in order to make any adjustments necessary to meet the needs of the community.

Issues/Analysis

The Durham Police Department's (DPD) Training Division uses multiple resources to evaluate the types of training that meet the needs of the officers and satisfy federally mandated training requirements; State mandated training requirements; CALEA accreditation requirements; City of Durham requirements; professional licensing requirements; and agency and community specific requirements.

DPD continually evaluates the department's training offerings and utilizes best practices to enhance the training program. All training blocks are critiqued and instructor evaluations are completed at the end of the training. The delivery methods for providing training to DPD officers include State mandated training videos; weekend training; hosting various classes; online training; and topic driven training that can be scheduled as the need arises. The process is designed to allow the Training Division to identify current issues and tailor the instruction to fit the current needs of the department and respond to needs in the community.

Legal Analysis

N/A

Peer Review Results

N/A

Best Practices Review

N/A

Management Recommendation

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.

Status

Ongoing.

DURHAM
1869
CITY OF MEDICINE

RESPONSE TO THE RECOMMENDATIONS OF THE HUMAN RELATIONS COMMISSION (HRC) AND CIVILIAN POLICE REVIEW BOARD (CPRB)

HRC RECOMMENDATION

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.

HRC 19: We recommend the City of Durham review the data [regarding marijuana arrests] and recommend whether to implement a similar initiative to the City Council.

ISSUES/ANALYSIS

A review of practices and laws related to marijuana sale, possession, usage, crime category, and enforcement vary considerably at the state and local level and changes continue on a regular basis. The HRC reference to Seattle low level enforcement has become outdated as the State of Washington's laws regarding the sale and possession of marijuana has become more permissive in that state. Marijuana continues be an illegal drug nationally and within the State of North Carolina.

Similarly the concept of "making marijuana arrests a low priority" has varied interpretations and perceptions between intent, concept, and practice. These varied interpretations were even evident among the local advocacy groups that were interviewed as a part of the administration's evaluation of this recommendation. Perspectives regarding "legalization", low level possession, low level transaction, and intended outcomes of low priority enforcement of marijuana met with varied thoughts and opinions.

As recently reported in the "Durham Herald Sun," Durham's (police and sheriff) marijuana arrest rates are 22.7% below the national average in 2012 and lower, and in many cases substantially lower, than similar marijuana arrests rates for most peer urban counties in North Carolina. These statistics further cloud answering the question of what "low priority" ultimately looks like.

As additional background, in North Carolina, possession of .5 grams of marijuana or less, in most circumstances, is a Class 3 misdemeanor. According to Judge Marcia Morey, State law has "90-96" which allows those who are charged and have no prior drug convictions, to go to drug treatment ($150) and pay court costs ($180) for a dismissal by the state. While many offenders cannot afford these costs, a bigger problem is that the arrest stays on the record. For those who get charged and do not qualify for a 90-96, most judges give a $15 - $25 fine with costs of court. Then judges often require community service in lieu of costs. State law no longer allows for defendants to get court appointed public defenders for Class 3 misdemeanors unless they have more than 5 prior convictions. There is no possibility of jail time unless the person has more than 5 prior convictions, per state law on Class 3 misdemeanors. These outcomes which result in little or no change in behavior and are accompanied by other negative impacts are a part of what appears to drive an

interest in so called low level enforcement. Current diversion programs, to avoid criminal record, is only available to 16-17 year olds through the Durham court system.

A more significant cause for concern is the unexplained racial disparity in misdemeanor marijuana arrests. For the eighteen- month period between 1/1/13 and 7/1/14, the Durham Police Department (not counting citations) made 768 misdemeanor marijuana arrests. Of those arrested, 86% were black, while 13.7% were white (see attached graphs). Similar statistics were not reviewed from the Durham County Sheriff. While a detailed analysis of similar statistics in peer North Carolina cities (or nationally) a quick internet search on this topic indicates many similar disparities (although not necessarily at the same degree) including even the City of Seattle which was held out as a model in the HRC recommendation. A more thorough understanding and assessment of the circumstances associated with these arrests is needed before conclusions can be drawn. This analysis and evaluation should include whether arrest was as a result of a traffic stop (including probable cause or consent search), premises search, transaction, arresting officer, etc. to determine if patterns can be discerned to better explain the apparent disparities.

Decisions regarding enforcing marijuana laws are principally made at the command level as to resources, staffing, patrol, and surveillance priorities and at the discretion of the individual law enforcement office at the situational level. Without a coordinated approach that involves agreement and "buy-in" of the entire local criminal justice system, including the Police Chief, Sheriff, District Attorney, and District Court a directive from either an elected body or city administrator is not likely to result in outcomes that address the intended, albeit varied, intentions associated with "low level" priority marijuana enforcement.

Legal Analysis

There is no legal prohibition to making inquiries to other municipalities who may have put forth initiatives making marijuana enforcement a low priority or against reviewing data collected in HRC-18 to determine whether to recommend the implementation of a similar initiative to the Durham City Council. Generally speaking, there are no legal prohibitions that would prevent a local government from setting its own local law enforcement priorities. However,the law likely would not support a local law enforcement priority of not simply not enforcing (nullifying) existing state or federal law. Those law enforcement officials that refuse to uphold state and federal laws may effectively be in violation of their oath of office.

Peer Review Results

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Does your police department have a policy or directive making misdemeanor marijuana arrests a low priority?	No	No	No	No	No	No	[Did not answer]

Best Practices Review

As indicated above a general review of national best practices regarding low-priority marijuana enforcement reveals a varied and localized response depending on local laws and authorities.

Management Recommendation

The Administration recommends:

1. 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 January 1, 2015.
2. That the Police Department institute a policy to require an annual review of misdemeanor marijuana arrests for unexplained disparities.
3. 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.

Status

On-going.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

HRC 20: 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. (Reference: Nacole.org Models of Civilian Oversight in the United States: Similarities, Differences, Expectations and Resources)

Issues/Analysis

In an effort to ensure impartiality and fairness, some members of the community would like for the Civilian Police Review Board to investigate initial complaints. As the process currently works, any initial complaint is submitted to the Police Department. The Police Department completes an investigation and sends a letter to the Complainant notifying them of the outcome of the investigation. In that same letter, the Complainant is notified that they can request a hearing before the CPRB if they are dissatisfied with the Police Department's ruling.

CPRB consists of nine members that are appointed by the City Manager and represent a variety of backgrounds and interests. The term for each Board member is four years and they are required to complete the Citizens Police Academy, sixteen hours in a patrol car ride-along, and training provided by the City Attorney's Office. State law prohibits certain types of personnel information from being shared. Under its existing authority, the Civilian Police Review Board would run afoul of that law if all initial complaints were submitted to the Board instead of the Police Department. In addition, the Civilian Police Review Board did not include this as a priority in it's list of recommendations to the City Manager.

Legal Analysis

Any change to the duties and responsibilities of the Citizens Police Review Board would likely require an amendment to the enabling legislation that created the CPRB in the late 1990's. It is the opinion of the CAO that this request not be contemplated in the CPRB enabling legislation.

Peer Review Results

Many models exist throughout the country for investigating complaints against Police Department employees, but common practice in N.C. is for complaints to be investigated by the Police Department. In some instances, investigations occur at the District level; but for more serious infractions, they are investigated by Internal Affairs. For the responding peer cities (Asheville, Fayetteville, Greensboro, Raleigh, Wilmington, Winston Salem), all initial complaints are investigated by the Police Department. In all cases, complaints can be against sworn and non-sworn Police Department employees.

Best Practices Review

N/A

Management Recommendation

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.

Status

Administration does not support this recommendation; however, it will begin dialogue with Civilian Police Review Board members to ascertain how the Board can enhance community and police relations. This effort will begin within the next 90 days and will be ongoing.

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

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.

Issues/Analysis

The training that is currently provided to CPRB members is centered on the internal investigations process and the relevant general orders. The National Association for Civilian Oversight of Law Enforcement (NACOLE) is a non-profit organization that brings together individuals or agencies working to establish or improve oversight of police officers in the United States. Its mission is "to enhance fair and professional law enforcement responsive to community needs."

The annual membership fee is $400 and would allow the City access to a variety of resources, including technical assistance and conferences. Access to NACOLE's information could enhance the knowledge base of CPRB members.

Legal Analysis

N/A

Peer Review Results

Peer cities did not indicate whether they are members of NACOLE.

Best Practices Review

N/A

Management Recommendation

1) Obtain membership with NACOLE

2) Identify trainings/technical assistance for CPRB members

Status

This recommendation has not been approved nor implemented; but, staff will conduct follow up with N.C. peer cities to determine NACOLE membership and each municipality's experience with the NACOLE.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

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.

Issues/Analysis

Civilian police review boards can perform an important role in police and community relations and helping to build and bridge trust and respect which is critical to effective law enforcement. Civilian police review boards and associated oversight can increase public trust in police by assuring the public that investigations into citizen complaints are fair and objective. Improved public trust hopefully leads to greater public cooperation with law enforcement leading to more effective law enforcement. In some communities civilian police review boards also can be a helpful bridge between community and police relations following major incidents. The formal reporting relationship between a civilian police review board, the police department, and the local government vary and effectiveness in its role is not generally guided by its reporting relationship.

The HRC Recommendation should be considered in two parts: oversight of the Board and appointments to the Board.

The Durham Civilian Police Board and its current reporting relationship was established in 1998. While appointments to the Board are the responsibility of the City Manager and the Board is staffed by the Senior Assistant to the City Manager. In essence the Civilian Police Review Board is accountable to the community, the City Council, and the City Manager. While the CPRB and other citizen advisory boards are appointed by the City Council, staffing is provided by specific departments and is under the responsibility of the City Manager. It is unclear how the CPRB would function different with City Council oversight. Opportunities are present to improve communications with City Council on decisions and actions of the CPRB.

Currently appointments to the CPRB involve public advertisement and initial vetting of residency etc. through the City Clerk's Office. Qualified applications are forwarded to the City Manager's office where they are reviewed by the Senior Assistant to the City Manager considering the current membership on the Board and the backgrounds and interests of applicants. The Senior Assistant to the City Manager interviews a short list of candidate and recommends two or three candidates to be interviewed by the City Manager. The City Manager then interviews candidates and makes the appointment. The current practice has been continuation of appointment as long as a member maintains attendance and wishes to remain on the Board. Board members are compensated $25 per meeting.

The current method of appointment, while at the sole discretion of the City Manager, allows for a thorough vetting of candidates interests and objectivity as well as consider gender, ethnicity, and other board diversity issues.

Appointments to the CPRB could easily follow the City Council "voting" selection method used with effectiveness for most other citizen advisory boards recognizing that appointees are generally not interviewed or otherwise vetted. There is potential that such appointments could be exposed to political or other considerations.

A third method of appointment is a hybrid of the two that would provide that candidates be vetted consistent with current practice through the City Manager's Office with candidates recommended to the City Council for confirmation. This method would allow vetting of candidates but provide for the City Council to have a role in the selection process and provide for more transparency in the selection process.

Finally as indicated below a staff attorney has always been assigned to assist the Civilian Police Review Board.

Legal Analysis

Any change to the duties and responsibilities of the Citizens Police Review Board would likely require an amendment to the enabling legislation that created the CPRB in the late 1990's. The CAO has always had a staff attorney assigned to the CPRB (Patrick Baker 1999-2004; Kim Rehberg 2004-Present)

Peer Review Results

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Has your city established a civilian police review board (CPRB) or similar body to review complaints about your police department?	No	No	Yes	No	No	Yes	[Did not answer]
Who appoints the members of the CPRB?			Currently appointed by Human Relations. However, Council has formed a committee to recommend improvements. This may or may not evolve to appointments directly from Council, as representatives of each Council district.			Mayor	
To whom does the CPRB report its findings?			Police Chief			City Manager	

Best Practices Review

Practices vary across the country.

Management Recommendation

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.

Status

Will require modification to enabling legislation.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

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.

Issues/Analysis

Current openings on the Civilian Police Review Board are advertised through the City Clerk's Office. Currently several members of the CPRB are active in PAC organizations including current and past PAC co-facilitators. The administration conducts extensive review of CPRB applications to assure the CPRB retains balance of perspective, ethnicity, gender, etc. but does not generally consider residency location or PAC district. To do so potentially would add an additional consideration that may complicate overall balance. In partial response to the HRC recommendation the City Clerk's Office could provide specific notification to PAC co-facilitators when openings occur on the CPRB.

Legal Analysis

N/A

Peer Review Results

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Has your city established a civilian police review board (CPRB) or similar body to review complaints about your police department?	No	No	Yes	No	No	Yes	[Did not answer]
Who appoints the members of the CPRB?			Currently appointed by Human Relations. However, Council has formed a committee to recommend improvements. This may or may not evolve to appointments directly from Council, as representatives of each Council district.			Mayor	

Best Practices Review

N/A

Management Recommendation

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.

Status

Completed. General notification change to PACs has occurred and will happen as vacancies occur.

DURHAM
1869
CITY OF MEDICINE

RESPONSE TO THE RECOMMENDATIONS OF THE HUMAN RELATIONS COMMISSION (HRC) AND CIVILIAN POLICE REVIEW BOARD (CPRB)

HRC RECOMMENDATION

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.

ISSUES/ANALYSIS

Members of the community have expressed concern about the amount of time for Complainants to submit a Request for Appeal to the CPRB. The current process outlined in **Section 4.5 Appeals Procedures** in the *Civilian Police Review Board Manual* states, "All requests for appeals must be filed in writing with the City Clerk's Office. The request must state the nature of the original incident and the reason for the appeal. The citizen must file the request within 14 calendar days of receiving written notice from the Police Department of the disposition of the complaint." Some believe that 14 calendar days is not a sufficient amount of time for Complainants to prepare a thorough Request for Appeal that might compel the CPRB to agree to conduct an appeal hearing.

In the current process, there is no way to know whether a Complainant has in fact received the determination letter from the Police Department, and nor is there a process/procedure for knowing when the determination letter was received by the Complainant.

LEGAL ANALYSIS

N/A

PEER REVIEW RESULTS

CITY	IS THERE A PROCESS FOR APPEALING THE OUTCOME OF THE INITIAL INVESTIGATION?	IF SO, WHAT IS THE TIMELINE FOR FILING/SUBMITTING THE APPEAL?
Asheville	No	Not Applicable
Fayetteville	Yes	Within 7 calendar days of receiving written notice from the Police Department of the disposition of the complaint
Greensboro	Yes	Within 30 days of the date **in** the determination letter
Raleigh	No	Not Applicable
Wilmington	No	Not Applicable
Winston-Salem	Yes	Didn't specify deadline for filing appeal
Charlotte	Yes	Within 30 **calendar** days of **receiving** written notice of the disposition of the complaint

Best Practices Review

N/A

Management Recommendation

1) 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).

2) 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.

Status

The requested changes have not been approved nor implemented. In order to implement the proposed change, the Civilian Police Review Board Procedure must be amended and approved by City Council, which could take up to 90 days.

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

HRC 25: We recommend the complainant have 60 days to gather information, documents, evidence, etc. to submit to the Citizens Police Review Board.

Issues/Analysis

In an effort to ensure a more detailed and thorough Request for Hearing from Complainants, the suggestion has been made to allow Complainants a longer period of time to submit "evidence." The current process requires that the Request and all supporting documents be submitted within 14 calendar days of receiving the determination letter from the Police Department. If the Civilian Police Review Board decides to grant the Complainant a hearing, The hearing will be scheduled at the Chair's discretion but should be within three months after the decision to hold a hearing.

Legal Analysis

N/A

Peer Review Results

N/A

Best Practices Review

N/A

Management Recommendation

Allow Complainants 30 calendar days, instead of 14 calendar days, to file a Request for Hearing with the CPRB.

Status

Administration concurs with a longer period to gather information, and recommends 30 days. Since this requires a change to the CPRB Procedure Manual, which City Council must approve, this change could take up to 90 days.

DURHAM
1869
CITY OF MEDICINE

RESPONSE TO THE RECOMMENDATIONS OF THE HUMAN RELATIONS COMMISSION (HRC) AND CIVILIAN POLICE REVIEW BOARD (CPRB)

HRC RECOMMENDATION

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.

ISSUES/ANALYSIS

Both the Civilian Police Review Board (CPRB) and Human Relations Commission (HRC) expressed concern about the inaccessibility of the Request for Hearing ("Appeal") Form. The Appeal Form is the document that is submitted to the City Clerk's Office after a Complainant has received a Determination Letter from the Police Department, and they are dissatisfied with the outcome of the Police investigation. The Appeal form can be found on the City Manager's webpage and the City Clerk's Office webpage.

LEGAL ANALYSIS

N/A

PEER REVIEW RESULTS

N/A

BEST PRACTICES REVIEW

N/A

MANAGEMENT RECOMMENDATION

1) Develop an electronic format of the Request for Hearing ("Appeal") Form

2) Include a link to the electronic Appeal Form on the Human Relations webpage

STATUS

Administration concurs with this recommendation. The electronic Complaint Form is addressed in CPRB 1 and staff has begun the process of developing electronic submission capability of the Request for Appeal form. These changes should be completed within 30 days.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

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.

Issues/Analysis

The City of Durham expects and promotes the highest ethical standards and behaviors of City employees which also extends to all members of the Durham Police Department. The City encourages any person or entity, including the Citizen's (Civilian) Police Review Board, to immediately report any finding or suspicion of unethical behavior of City employees directly to the City Manager or through the Fraud, Waste and Abuse reporting process of the Audit Services Department, so that it can be thoroughly investigated and reviewed. Results of these investigations are reported directly to the City Manager and to the Audit Services Oversight Committee (subject to State Personnel Privacy Laws).

Legal Analysis

Any change to the duties and responsibilities of the Citizens Police Review Board would likely require an amendment to the enabling legislation that created the CPRB in the late 1990's. It is the opinion of the CAO that the request in HRC 27 is not contemplated in the CPRB enabling legislation.

Peer Review Results

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Has your city established a civilian police review board (CPRB) or similar body to review complaints about your police department?	No	No	Yes	No	No	Yes	[Did not answer]
Does the CPRB have any investigatory authority?			No			No	
To whom does the CPRB report its findings?			Police Chief			City Manager	

Best Practices Review

N/A

Management Recommendation

The Administration supports the recommendation that any findings or suspicion of unethical behavior be reported to the City Manager or Audit Services Department for review and investigation. Merited disciplinary action will be determined in accordance with City of Durham Personnel Policies and Procedures.

Status

No further action required.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

HRC 28: We recommend Complaint Forms be available to complete online, and allow for electronic submission with tracking and receipt of complaint form.

Issues/Analysis

Both the Civilian Police Review Board (CPRB) and Human Relations Commission (HRC) expressed concern about the inaccessibility of the Complaint Form. The Complaint Form is the document that is used to lodge a complaint against any employee of the Durham Police Department. It can currently be found on the Police Department's webpage, and hard copies of the Form are available at the front desk of Police Headquarters and all five Police substations. Complaints are addressed by the Police Department (at the District level or Internal Affairs, depending on the nature).

Legal Analysis

N/A

Peer Review Results

CITY	ON PD'S WEBSITE	FILLABLE ONLINE	SUBMISSION OPTIONS
Asheville	Yes	No	Telephone, in person, fax, mail, or email
Fayetteville	Yes	Yes	Telephone, mail, or email
Greensboro	Yes	Yes	Telephone, in person, mail, or email
Raleigh	(Instructions Only)	No	Telephone, in person, telephone, or email
Wilmington	Yes	Yes	Email
Winston-Salem	(Instructions Only)	No	In person only

While accessibility and submission options vary from city to city, all initial complaints are submitted to the Police Department for investigation.

Best Practices Review

N/A

Management Recommendation

1) Institute a Complaint Form that can be completed on line and submitted electronically.

2) Make Complaint Forms accessible from the City Manager's webpage and place hard copies at the Durham One Call desk in the first floor lobby of City Hall and the City Manager's Office.
3) 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.
4) Develop a Complaint Form in Spanish.
5) Continue instructing Complainants to submit their complaints to the Police Department.

Status

Administration concurs with this recommendation. Make the revisions provided by the Civilian Police Review Board (Revise "contact information" area of the Complaint Form to not specify work or place of employment and include a space for complainant's email address); Staff has begun working with Technology Solutions to implement a Complaint Form that is fillable online and can be submitted electronically, and the form will be available in Spanish. These tasks can be completed within 90 days.

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

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.

Issues/Analysis

Communication, or lack thereof, has been a concern regarding complaints of Durham Police Department. Some believe that the investigation process "takes too long" and tends to exacerbate the frustration of Complainants. While the Police Department seeks to resolve complaints within 90 days, no two investigations are the same; however, each follows the same process from beginning to end. The Police Department strives to complete a thorough investigation but often times encounter challenges when coordinating interview times with witnesses. In addition, the more witnesses mentioned in the complaint then the more individuals that need to be interviewed – which requires additional time as well.

Legal Analysis

The timeliness of the Department's response to a sustained complaint is not a legal issue. As to the request to provide a "more substantive response," the CAO would need to understand what additional information is being requested to be included in the Department's response. At a minimum, however, the contents of the correspondence must comply with all applicable personnel privacy laws. If an employee was terminated as a result of the allegation of a complaint, the termination letter setting forth the basis of the termination may be disclosed.

Peer Review Results

N/A

Best Practices Review

N/A

Management Recommendation

1) 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.

Status

Completed. The Police Department has begun providing an expected "completion" date in their initial letter to the Complainant.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

HRC 30: We recommend a policy that ensures complaints of retaliation are properly investigated.

Issues/Analysis

Review suggests the Durham Police Department (DPD) has clear policies regarding officer conduct during internal investigations. General Order 1014 R-7 Internal Affairs sets forth the procedures for investigation and the rules that officers and investigators must follow when an investigation is underway. These regulations include strict prohibitions against any Police Department employee contacting "any complainant, complainant's witness, or other involved member in any manner without specific authorization from his or her supervisor and the officer investigating the complaint." This prohibition is of particular value in protecting individuals who may have brought claims of retaliation against the Police Department, ensuring that they will not be interfered with or intimidated as a result of the investigation.

Further, the same General Order states "Members against whom a complaint has been made shall not attempt directly or indirectly, by threat, appeal, persuasion, payment of money or other consideration, to secure the abandonment or withdrawal of the complaint, charge, allegation, or investigation." The penalty for violating either of these sections of the General Orders is up to and including termination.

The Department reports that, in its history, it has investigated five (5) instances of alleged violations of General Order 1014 R-7 Internal Affairs. 80% (4 of the 5) were sustained. While none of these 5 investigations involved specific allegations of retaliation, the fact that 80% of the allegations were sustained demonstrated that the Department takes alleged violations of General Order 1014 R-7 seriously.

Legal Analysis

N/A

Peer Review Results

Two of the seven peer cities we contacted reported having a policy specifically aimed at investigating claims of retaliation. However, the procedures outlined by these policies closely follow the practice described above for any internal affairs investigation.

Best Practices Review

N/A

Management Recommendation

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. Management supports a robust system of protections like those contained in the existing Durham Police Department general orders, and has a responsibility to ensure that any employee who violates the general orders are disciplined appropriately. An analysis of the current complaint process identifies no visible weakness in the current policy and process, but management should remain vigilant going forward to ensure employees adhere to these policies.

Status

Completed.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

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.

Issues/Analysis

This issue relates to HRC 20 recommendation to broaden powers, authority, and responsibility of the Civilian Police Review Board. The issue of response to retaliation is addressed in the administration's response to HRC 30.

Legal Analysis

Any change to the duties and responsibilities of the Citizens Police Review Board would likely require an amendment to the enabling legislation that created the CPRB in the late 1990's. It is the opinion of the CAO that the request in HRC 31 is not contemplated in the CPRB enabling legislation.

Peer Review Results

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Has your city established a civilian police review board (CPRB) or similar body to review complaints about your police department?	No	No	Yes	No	No	Yes	[Did not answer]
Does the CPRB have any investigatory authority?			No			No	

Best Practices Review

N/A

Management Recommendation

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 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.

Status

No further action needed.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

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.

Issues/Analysis

The City of Durham's Police Department's General Order 4074 – Bias Based Policing last updated September 2011 defines bias based profiling and strictly prohibits the practice. The policy also requires a documented annual review of agency practices related to bias based profiling. The review is required to be forwarded to the Chief of Police annually. While certain data were collected and reviewed, there has not been an analysis of the data at the individual officer level. Additionally, the Police Department has not determined the aggregate data reported in the past to be suggestive of bias based policing. The most recent report dated February 11, 2013 has been submitted for review for this project.

Until August 1, 2014, the data being collected and reported did not provide substantive and pertinent information necessary for evaluating factors such as assignments, shifts, and districts. Unless this information is collected and reported, analysis of the data returned is limited. The ability to set alert thresholds is also limited due to the variances associated with these factors.

The Department's data collection system was recently modified to capture time of day/night of stop and location. Combined with duty assignment, this information is valuable in adding context to the purpose for specific police activities. The reliance on aggregate departmental results and analysis and complaints of bias-based misconduct was determined to be insufficient to determine if bias based policing exists.

Legal Analysis

N/A

Peer Review Results

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte
Does your police department use any measures or benchmarks to monitor racial disparity in stops and searches?	Yes	Yes	Yes	No	Yes	Yes	No
If so, what measures/bench marks are in use?	We utilize the state data that officers enter for racial profiling on traffic stops. Annual review regarding motor vehicle stops/searches for reporting submitted to State.	1.8.6 SUPERVISION AND ACCOUNTABILITY (excerpt from policy)	Review of rates against other agencies is available on line. Also, we create an annual report that measures complaints against employees, nature of the complaint, etc.... which allows us to identify trends.		Biased-Based Profiling forms are completed after traffic stops.	Traffic stop data forms are completed	

Best Practices Review

A limited review of research projects and case studies found in the International Association of Chiefs of Police National Law Enforcement Policy Center, U. S. Department of Justice, and the Commission on Accreditation of Law Enforcement Agencies, Inc. suggest while bias can exist in any discretionary decision concerning service delivery or crime prevention, much national research has been done and much data collected and analyzed in recent years regarding bias in traffic enforcement.

This review provided support for the position that the implementation and use of a well-managed early intervention system is an effective strategy for improving accountability and holding individual officers responsible for their discretionary actions in the field. These data driven systems allow managers to identify officers who have recurring, unusual or problematic behavior and to intervene through counseling and additional training.

These systems when well designed and well managed also help provide an overall picture of the individual officer's policing activities and the agencies collective policing activities. Data properly collected and used can provide context when questions are raised about disparities that are associated with factors other than officer bias. The systems can also collect and return data useful in examining trends and benchmarking results with similar organizations.

Management Recommendation

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.

Status

Completed. The Durham Police Department implemented changes detailed in the issues/analysis section of this report on August 1, 2014.

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

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.

Issues/Analysis

The HRC in the recommendation seeks to be thorough in providing information to the public regarding citizen rights during police encounters. Efforts to have an informed public on this subject are juxtaposed with a city's responsibility to ensure unbiased and effective policing. As such, collaborations need to be very carefully considered.

The Human Relations Commission is an entity that can be a resource to provide information on police and citizen engagement. The City is charged with oversight of and collaborative with the Police Department on community relations to ensure that policing is responsive while being effective. The City needs to be responsible and contemplative about the "intersections" of these efforts.

Legal Analysis

N/A

Peer Review Results

N/A

Best Practices Review

A literature review on this subject does not reveal practices of local governments partnering with outside entities to provide information or offer formal efforts to inform citizens of rights during law enforcement encounters. The literature is full of information provided by myriad organizations that provide this information while police agencies focus on community relations activities pursuant to creating a mutual understanding of public safety operations.

Management Recommendation

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.

Status

Ongoing.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

HRC Recommendation

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.

Issues/Analysis

The City of Durham's Strategic Plan was last updated and adopted by the City Council on April 15, 2013. The Strategic Plan is the guide that is used to help with prioritizing financial resources, effort, and planning in almost every area of City government.

Since 2012, the City of Durham has introduced and implemented a facilitated departmental strategic planning process. Integral to the City's Strategic Plan are departmental plans that align with the goals and objectives of the City's plan. The first departmental plan was approved in 2012, and an additional 15 departmental plans have been developed and approved since 2012. Six (6) departmental plans are in process. The Police Department is one (1) of the six (6) departments with a plan in process with a projected completion date of September 2014.

The HRC report recommendations have been reviewed and incorporated in the development of the Police Department's strategic planning process.

Due to the holistic approach to strategic planning in the City, the process requires a review by each department developing a departmental plan to align with goals of the City's plan. Departments throughout the City that have core services, key customers and a purpose that aligns with the *Safe and Secure Community* goal have been linked to this goal.

The collaboration between the Police Department and the community to solve community problems defines community policing. The constructive community collaborations and partnerships that are necessary for success require among other inputs training, creativity, targeted effort, resources, and a common understanding. Community policing requires a long term commitment. Progress can be effectively assessed and made transparent to community residents when incorporated in the strategic plans that are being implemented by the City of Durham and communicated to its residents.

Legal Analysis

N/A

Peer Review Results

N/A

Best Practices Review

N/A

Management Recommendation

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.

Status

The City Manager's Office received a written draft of the Police Department's Strategic Plan on August 4, 2014. The Police Department will present the plan draft to the City's Executive Team by the end of August 2014.

The final plan will be adopted in September 2014.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

CPRB Recommendation

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 One Call with concerns about police services.

Issues/Analysis

Both the Civilian Police Review Board (CPRB) and Human Relations Commission (HRC) expressed concern about the inaccessibility of the Complaint Form. The Complaint Form is the document that is used to lodge a complaint against any employee of the Durham Police Department. It can currently be found on the Police Department's webpage, and hard copies of the Form are available at the front desk of Police Headquarters and all five Police substations. Complaints are addressed by the Police Department (at the District level or Internal Affairs, depending on the nature). The HRC and CPRB have recommended that Police Department complaints be submitted to Durham One Call to ensure anonymity; however, this would not be an efficient use of Durham One Call. Durham One Call is designed to respond to a high volume of calls during the City's normal business hours, and the level of detail that's needed for a thorough complaint could not be handled accordingly based upon Durham One Call's current structure. For these reasons, along with visibility, it is not advisable to place decals on patrol cars to instruct citizens to contact Durham One Call.

In addition to the lack of accessibility, some object to the Complaint Form requesting a complainant's occupation or work telephone number. Some believe making contact with employers might negatively impact complainants' current and future employment.

Legal Analysis

N/A

Peer Review Results

CITY	ON PD'S WEBSITE	FILLABLE ONLINE	SUBMISSION OPTIONS
Asheville	Yes	No	Telephone, in person, fax, mail, or email
Fayetteville	Yes	Yes	Telephone, mail, or email
Greensboro	Yes	Yes	Telephone, in person, mail, or email
Raleigh	(Instructions Only)	No	Telephone, in person, telephone, or email
Wilmington	Yes	Yes	Email
Winston- Salem	(Instructions Only)	No	In person only

While accessibility and submission options vary from city to city, all initial complaints are submitted to the Police Department for investigation.

Best Practices Review

N/A

Management Recommendation

1) Institute a Complaint Form that can be completed on line and submitted electronically.
2) Make Complaint Forms accessible from the City Manager's webpage and place hard copies at the Durham One Call desk in the first floor lobby of City Hall and the City Manager's Office.
3) Revise the Complaint Form to allow (but not require) 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.
4) Develop a Complaint Form in Spanish.
5) Continue instructing Complainants to submit their complaints to the Police Department.

Status

Revise the Complaint Form to include the recommendations of the Civilian Police Review Board (revise "contact information" area of the Complaint Form to not specify work or place of employment and include a space for complainant's email address); Working with Technology Solutions to implement a Complaint Form that is fillable online and can be submitted electronically; Secure translator to create the Complaint Form in Spanish; 30 – 60 days should be allowed for development and implementation of an online Complaint Form

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

CPRB Recommendation

CPRB 2: We recommend that the most recent general orders, policies and procedures of the Police Department should be accessible online.

Issues/Analysis

Transparency regarding how police officers do their work is critical to maintaining and building the public trust. In addition, most information contained in the general orders and policy and procedure documents are considered public information under North Carolina state law. Therefore, posting this information online is consistent with both the philosophy of the Department and the laws of the state.

It is noted that some information contained in these documents is not public information under state law, related specifically to issues like special operations and/or sensitive facilities and topics. It would not be in the public's best interest to post this information. However, it is reasonable to redact or remove this information while posting all other general orders and procedures.

Legal Analysis

N/A

Peer Review Results

Two of the seven cities in North Carolina that responded to our survey indicated they do post this information on a public website.

	Asheville	Fayetteville	Greensboro	Raleigh	Wilmington	Winston-Salem	Charlotte (did not complete)
Are the policies, procedures, and general orders of your police department available on your organization's public-facing website?	No	Yes	Yes	No	No	No	

Best Practices Review

N/A

Management Recommendation

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.

Status

Administration concurs, and this recommendation is currently being implemented. The Durham Police Department estimates the project will take approximately 3 months to complete.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

CPRB Recommendation

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.

Issues/Analysis

In an effort to improve communication and responsiveness, the CPRB has recommended that the Professional Standards Division send the complainant a letter letting them know that their complaint has been received. Some have expressed discomfort not knowing the status of their complaint or whether it was even received. It has been stated that the average/lay person isn't familiar with the City's complaint or investigative process; therefore, the letter from the Professional Standards Division should seek to inform complainants of their options and the City's complaint process. Some have also complained about the amount of time taken to investigate a complaint, so the CPRB recommendation suggests including a timeframe in the letter in order to establish a level of expectation for the investigating the complaint.

Legal Analysis

N/A

Peer Review Results

CITY	IS COMPLAINANT PROVIDED UPDATE?	WHO PROVIDES UPDATE?	HOW IS UPDATE COMMUNICATED?
Asheville	Yes	Supervisor	Telephone, mail, or email
Fayetteville	Yes	Supervisor	Telephone or email
Greensboro	Yes		Verbally or mail
Raleigh	Yes		Telephone or in person
Wilmington	Yes	I.A. Investigator	Telephone
Winston- Salem	Yes	Police Chief	Mail

Best Practices Review

N/A

Management Recommendation

1) The Police Department should follow up with Complainants if the investigation is going to last longer than the projected completion date.

2) 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.

Status

Administration concurs that more information should be provided to Complainants.

1) Complainants have been receiving two letters from Professional Standards since March 2014. The **first** letter is provided by DPD to notify the complainant that their Complaint has been received. At the beginning of the investigation, the complainant will receive a **telephone call** from the investigator to schedule an interview and gather additional facts to follow-up on. It is the responsibility of the complainant to make Professional Standards aware of phone numbers and or address changes. The **second** letter is sent to the complainant at the conclusion of the investigation and states the disposition of the investigation.

2) With respect to including an explanation of the investigative process, the initial letter currently states that, *"The investigation will be accomplished by means of locating possible witnesses, interviewing people involved, and utilizing any evidence that may be available."* This has been in place for quite some time and is a succinct description of the investigative process. The following additional language has also been added: *"For more details concerning the complaint process, go to: http://durhamnc.gov/ich/op/DPD/Pages/Commendation.aspx. If you would prefer a copy of the complaint process in writing mailed to you, please contact me directly"* (referring to the captain of Professional Standards). This has been in place since March of 2014. Additionally, the investigative process is elaborated on during the initial telephone conversation with the Investigator if the complainant asks.

3) The initial letter sent to the Complainant includes the timeline for completing the investigation (45-days or 90-days depending on the nature/severity of the complaint). The investigative process can take any number of turns that may lengthen that time as Investigators are working through multiple cases simultaneously.

4) The contact information for the Captain of the Professional Standards Division is provided in the <u>initial</u> letter sent to the Complainant and can/will be included in the letter sent to the complainant at the completion of the investigation.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

CPRB Recommendation

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.

Issues/Analysis

In an effort to improve transparency with the Police complaint process, both the Civilian Police Review Board and Human Relations Commission suggest providing more details about the investigation in the determination letter that is sent to the Complainant. The "determination letter" is sent at the conclusion of an investigation. The perception is that Complainants receive what appears to be a form letter or template that isn't personalized to the Complainant's case, and the lack of details about one's complaint could make Complainants feel as if their complaint was not thoroughly investigated. Investigations vary in complexity and briefly documenting all the relevant details can be nearly impossible. Providing a more detailed explanation in the determination letter would require more time of the Police Department/Investigator which could impact the timeliness of Police responses. Fulfilling this request would require a delicate balance of time requirements/expectations and providing information specific to the investigation but not in such a way that might suggest the investigation wasn't thorough.

Based on Civilian Police Review Board discussions, most Complainants want to know that their complaint was heard and that something was done to the "offender" (Police Department employee). Most people aren't informed about the Police Department's investigation process or the City of Durham's disciplinary process. To enhance transparency and to enlighten the general public, the CPRB and Human Relations Commission suggests sharing the six levels of discipline in the determination letter which are:

1. Coaching and counseling
2. Verbal reprimand
3. Written reprimand
4. Suspension
5. Reduction of salary or demotion
6. Termination

Personnel privacy laws restrict the type of discipline that can be shared; however, it is believed that the Complainant might feel more confident in the investigation if they knew that the employee was disciplined.

Legal Analysis

The discipline received by an employee is a confidential personnel record and may only be released in accordance with General Statute 160A-168. Subsection (b) only allows the date and type of certain disciplinary actions to be released. Those specific types are: demotions, suspensions, and terminations. This statute does not provide that a municipality may release that these personnel actions were the result of particular conduct. Only when the personnel action was termination does the statute provide for the release of the acts or omissions that served as the basis for the dismissal.

Peer Review Results

CITY	HOW ARE COMPLAINANTS NOTIFIED ABOUT THE COMPLETION OF THE INVESTIGATION?	IS DISCIPLINE INCLUDED IN COMMUNICATION TO COMPLAINANT?
Asheville	Professional Standards sends **letter**	No
Fayetteville	Investigating Supervisor **calls** complainants for low level complaints; Internal Affairs sends **letter** to complainants for more serious allegations	Yes, but only what can be disclosed in accordance with State law (NC 160A-168)
Greensboro	Letter	Yes, but only what can be disclosed in accordance with State law (NC 160A-168)
Raleigh	Letter sent via registered mail with return receipt request	No Response
Wilmington	Letter	No Response
Winston- Salem	Letter from Police Chief	No Response

Best Practices Review

N/A

Management Recommendation

1) 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.

2) 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.

3) 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.

Status

The Police Department has begun providing additional information in the Determination Letter to the Complainant. It would be very challenging to provide a summary that is more detailed than what's currently being provided. Investigations rely on the in-depth analysis of numerous pieces of evidence. Attempting to consolidate that analysis into a brief synopsis would not provide a thorough or accurate explanation and therefore is likely to generate additional questions and concerns.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

CPRB Recommendation

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.

Issues/Analysis

Members of the community have expressed concern about the amount of time for Complainants to submit a Request for Appeal to the CPRB. The current process outlined in **Section 4.5 Appeals Procedures** in the *Civilian Police Review Board Manual* states, "All requests for appeals must be filed in writing with the City Clerk's Office. The request must state the nature of the original incident and the reason for the appeal. The citizen must file the request within 14 calendar days of receiving written notice from the Police Department of the disposition of the complaint." Some believe that 14 calendar days is not a sufficient amount of time for Complainants to prepare a thorough Request for Appeal that might compel the CPRB to agree to conduct an appeal hearing.

In the current process, there is no way to know whether a Complainant has in fact received the determination letter from the Police Department, and nor is there a process/procedure for knowing when the determination letter was received by the Complainant.

Legal Analysis

N/A

Peer Review Results

CITY	IS THERE A PROCESS FOR APPEALING THE OUTCOME OF THE INITIAL INVESTIGATION?	IF SO, WHAT IS THE TIMELINE FOR FILING/SUBMITTING THE APPEAL?
Asheville	No	Not Applicable
Fayetteville	Yes	Within 7 calendar days of receiving written notice from the Police Department of the disposition of the complaint
Greensboro	Yes	Within 30 days of the date **in** the determination letter
Raleigh	No	Not Applicable
Wilmington	No	Not Applicable
Winston- Salem	Yes	Didn't specify deadline for filing appeal
Charlotte	Yes	Within 30 **calendar** days of **receiving** written notice of the disposition of the complaint

Best Practices Review

N/A

Management Recommendation

1) 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).

2) 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.

Status

Administration concurs. The necessary changes to the CPRB Manual would require City Council approval, and take up to 90 days for both approval of Board Manual revisions and implementation, including changes to webpages and supporting documents.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

CPRB Recommendation

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

Issues/Analysis

It has become evident that not all complaints are appealed to the CPRB. The Police Department receives, and investigates, a variety of complaints against its employees over the course of a year, but the CPRB only becomes aware if a Complainant files a complaint with the Police Department, and is not satisfied with the outcome of their complaint, and then files a Request for Appeal with the CPRB. In an attempt to enhance transparency, the CPRB would like to receive a quarterly reporting of all investigations performed by the Professional Standards Division. This report would include those that have/might be appealed to the CPRB as well as those that may not. The report has been provided by the Police Department in the past but hasn't been provided on a regular basis. Previous reports have included the following information:

➢ Control Number (file number)	➢ Date Occurred (Incident date)
➢ Nature (rule/General Order that was violated)	➢ Officer(s)/Employee(s) Name (left blank)
➢ Complainant (name)	➢ Investigator (name)
➢ Disposition Due Date (outcome & not date)	➢ Disciplinary Action Taken (left blank)

There are some concerns about sharing personnel and/or Complainant information for cases that aren't appealed to the Civilian Police Review Board. It is not uncommon for Police departments to share more generic information (e.g., total # of misconduct complaints received, total # of use of force complaints received, etc.) at the macro level and not the level of detail that is being requested.

Legal Analysis

N/A

Peer Review Results

N/A

Best Practices Review

N/A

Management Recommendation

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. Reports should be submitted as follows:

REPORTING TIME PERIOD	REPORT DUE DATE
January - March	April 30th
April – June	July 31st
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)

Status

Administration concurs with this recommendation. Staff can begin working with the Police Department and Civilian Police Review Board to create a report that meets the needs of all involved. This process is expected to take 90 – 120 days.

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

CPRB Recommendation

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

Issues/Analysis

No issues nor analysis. This recommendation is in the City Manager's authority.

Legal Analysis

N/A

Peer Review Results

N/A

Best Practices Analysis

N/A

Management Recommendation

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.

Status

Complete.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

CPRB Recommendation

CPRB 8: The CPRB will develop a brochure about the complaint process and CPRB.

Issues/Analysis

Other cities with similar boards have brochures that provide general information about the complaint process. The brochures are available in English and Spanish, and are distributed at various community meetings. They also are provided at the police department and other locations.

Legal Analysis

N/A

Peer Review Results

N/A

Best Practices Analysis

N/A

Management Recommendation

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.

Status

Administration concurs. Public Affairs Office will arrange a meeting by the end of August to establish a production timeline for the brochure in both English and Spanish. While the distribution of the printed brochures outside of the City Manager's Office and Police Department will be at the discretion of the board, an electronic version will be placed on the City Manager's and the Police Department pages of the city's website. The brochure is projected to be completed and available for distribution and posting by December 2014.

DURHAM
1869
CITY OF MEDICINE

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

CPRB Recommendation

CPRB 9: The CPRB will host one community forum per year.

Issues/Analysis

Many residents are not aware of the options and resources available to them for seeking resolution to their complaint of any Police Department employee. Through the public input process, the Civilian Police Review Board (CPRB) has learned that many people do not know that the CPRB exists and aren't clear on the role of the CPRB. In an effort to inform/educate the general public and to increase the visibility of the CPRB, CPRB members would like to host a community forum each year. The forum will be an opportunity to explain the complaint and CPRB process to public and for the public to ask questions or make recommendations to the CPRB.

The CPRB recently conducted a community forum and would like to do so annually.

Legal Analysis

N/A

Peer Review Results

Of the peer cities that responded, none involve a community engagement component in their relative work.

Best Practices Review

N/A

Management Recommendation

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.

Status

Administration concurs with this recommendation. The proposed language change for inclusion in the CPRB Manual would require City Council approval and take 30 – 60 days to complete.

Response to the Recommendations of the Human Relations Commission (HRC) and Civilian Police Review Board (CPRB)

CPRB Recommendation

CPRB 10: Be available to present information on the complaint process to Partners Against Crime organizations and other interested community, civic and neighborhood groups.

Issues/Analysis

Similar to the annual community forum, presentations to community groups are expected to inform/educate the general public while increasing the visibility of the CPRB. The CPRB Chair, Vice Chair, or any member designated by the Chair would present to the respective community group(s). The presentation would include an overview of the CPRB role and process and would also include an opportunity for question and answer.

Legal Analysis

N/A

Peer Review Results

Of the peer cities that responded, none involves a community engagement component in their relative work.

Best Practices Review

N/A

Management Recommendation

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.

Status

Administration concurs with this recommendation. The CPRB Procedure Manual will be updated to formalize this expectation and to ensure continuity of this public outreach effort. The amended language would require City Council approval. This process would take approximately 60 to 90 days to complete.