

MEMORANDUM

TO: The Commission to Examine Racial Inequity in Virginia Law

FROM: Andrew Block (Vice-Chair), Kelsey Massey, Juliet Buesing, Christopher Yarrell, Wes Williams, Trust Kupupika, and Jessie Ames

RE: Policing Recommendations for Commission's Consideration

DATE: June 15, 2020

INTRODUCTION

In light of recent protests about issues of race and policing following the Minnesota death of George Floyd, and given Governor Northam's directive to the Commission to develop a set of concrete and actionable policy recommendations to promote police reform and racial equity, we submit this set of policy recommendations for the Commission's consideration.

While this memo focuses specifically on police reform and accountability, the problems that these policies are intended to address are, we recognize, symptomatic of the more pervasive and underlying inequality and disparities we highlighted in our presentation on May 21st. Accordingly, while focusing on this acute, and all-important problem, we must also continue to advance the reforms necessary to address the underlying problems as well.

We also recognize that policing is hard work and that law enforcement all too often is left to address complex social problems without the proper tools to do so. While proposing systemic changes outlined in this memo, we do not intend to diminish the true efforts of the men and women who serve in state and local law enforcement agencies. At the same time, we also recognize that change is necessary, both to address the negative and racially disparate impact that our law enforcement system has on people of color in Virginia, and to promote a greater sense of safety and security in our communities.

To reach the recommendations outlined in this memo we have examined reports on policing from many of the nation's experts, read a range of news articles chronicling proposed policy responses, and carefully compared that research to current statutes, regulations, and realities in Virginia today. We have not yet conducted interviews with law enforcement professionals to gain their reactions to these proposals, but remain willing to do that in the next round of our research. We have also tried, in the recommendations below, to offer a full menu of options for the Commission to consider. Some proposals may be more ambitious than others, and some may prove more controversial than others. However, we thought it important to be overly inclusive in order that the members of the Commission have the full range of policy options before them.

RACE & POLICING IN VIRGINIA

Though we have little data on police stops in Virginia, across the country the individuals most likely to be stopped by the police¹ and to experience force at the hands of police² are individuals of color. In Virginia, Black people in particular face higher rates of arrest³ and incarceration⁴ as well as disenfranchisement⁵—meaning that this high level of policing has severe consequences. Unfortunately, people of color are also more likely than whites to be victims of crime.⁶ There may be a reason police are more present in communities of color: policing data programs like COMPSTAT target areas for patrol where crimes are most likely to occur to make police more effective, and it just so happens that communities of color often correlate with communities of poverty and other trauma associated with criminal activity.⁷ However, critics point out that the statistics on which such systems rely are based on patterns of racially disparate policing, and thus become a self-fulfilling prophecy.⁸ But whether for legitimate cause or not, our communities of color somehow experience both more policing and less safety.

In many ways, these disparities are products of the origins of policing in Virginia and elsewhere in the South. Originally fashioned as slavery enforcement institutions, most southern states' police regimes have racist roots.⁹ These slavery police were responsible for catching and punishing disobedient or runaway slaves. Later, during the Jim Crow era (1880-1940), these groups were refashioned as official criminal enforcement enterprises, but they often targeted individuals of color who had committed minor infractions under Jim Crow laws, to then turn them over to

¹ Bureau of Justice Statistics, *Contacts Between Police and the Public* (2015) (finding Blacks more likely than whites or individuals of Hispanic origin to be pulled over in traffic stops)

² *Id.* (finding that, while only 1% of whites experienced force in an encounter with police, 3% of Black individuals did, as well as 3% of Hispanics). People of color also are more likely to perceive police action as illegitimate or excessive. *Id.* (finding that 60% of Blacks who experienced force by the police saw it as illegitimate or excessive, while only 43% of whites saw the force that they had experienced in the same way). See also, *The Myth of Police Reform* by Ta-Nehisi Coates (The Atlantic, 2015)

³ While Black individuals make up only 20% of Virginia's population, they make up 45% of Virginia arrests (Virginia State Police, 2019).

⁴ Blacks make up 53% of the prison population in Virginia, as of 2017 (The Vera Institute).

⁵ Black Virginians make up over half of the disenfranchised population, as of 2016 (The Sentencing Project).

⁶ Despite making up less than 20% of the Virginia population, Black individuals make up 45% of the victims of violent crime in Virginia (Virginia State Police, annual Crime in Virginia report, 2019).

⁷ Compstat: a Crime Reduction Management Tool: 1996 winner of Innovations in American Government Awards. Harvard Government Innovators Network. <https://www.innovations.harvard.edu/compstat-crime-reduction-management-tool>

⁸ Jamiles Lartey, Predictive Policing Practices labeled as 'flawed' by Civil Rights Coalition, The Guardian (Aug. 31, 2016), <https://www.theguardian.com/us-news/2016/aug/31/predictive-policing-civil-rights-coalition-aclu>

⁹ "As early as 1704 and continuing through the antebellum period, Southern slave states used local patrols with specific responsibility for regulating the activity of slaves. Those slave patrols were comprised of citizens who did patrol duty as their civic obligation, for pay, rewards, or for exemption from other duties. The patrollers had a defined area which they were to ride in attempts to discover runaway slaves..." Philip L. Reichel, Southern Slave Patrols as a Transitional Police Type, 7 *Am. J. Police* 51, 68 (1988).

penitentiaries for a punishment of hard labor that looked a lot like slavery.¹⁰ Even during the Civil Rights Era, police were involved in maintaining order by enforcing discrimination and segregation, often through excessive force.¹¹ Most recently, as the War on Drugs accelerated in the 1980s and '90s, many communities of color perceived the increasingly harsh punishment and enforcement of drug laws to be discriminatory and the accompanying police tactics to be unnecessarily aggressive. This history has led to a distrust of policing and criminal justice that has been hard to erase, even as police departments have faced new constitutional restraints and developed increased professionalism.

The main legal guide for policing—federal constitutional law—has not always helped. Though reforms like *Miranda* (1967) ultimately helped professionalize policing, the stop and frisk strategy legalized by *Terry* (1968) and the use of pretextual stops legalized by *Whren* (1996), have made it easier to disproportionately target communities of color with increasingly invasive tactics. In addition, it has become harder to prove federal constitutional law violations, whether alleging a racially disparate impact policing program under the Fourteenth Amendment (see, e.g. *Chavez v. Illinois State Police*) or a constitutionally excessive use of force under the Fourth (see *Graham v. Connor*).

Federal statutory law has also caused problems in police-community relations. By incentivizing aggressive drug policing through equitable sharing in asset forfeiture programs,¹² encouraging local police to enforce immigration,¹³ and distributing military equipment to local police departments,¹⁴ the federal government often incentivizes a type of policing that alienates and intimidates communities of color.

It is within this context that state changes become critically important. At the state level, we can fill in some of the gaps in federal law, mitigate some of the harms of federal programs, and create regulations and accountability systems that create incentives for the right kind of policing at the local level, that will protect communities of color from indignity and harm. As the Equal Justice Initiative noted in a recent report on Police Reform, “We need to create police

¹⁰ As the 19th century wore on, governments replaced slave patrols with police departments, which also served the interests of the white elite in preserving racialized economic and social division, including through enforcement of Jim Crow laws.” Rachel Harmon, *The Law of the Police* (forthcoming textbook) (citing Marvin Dulaney, *Black Police in America* 6 (1996)).

¹¹ Leah Donella, “How much do we need the police?,” Interview with Alex Vitale, NPR (June 3, 2020), https://www.npr.org/sections/codeswitch/2020/06/03/457251670/how-much-do-we-need-the-police?utm_source=dlvr.it&utm_medium=twitter&fbclid=IwAR1t0YoYnPOGhalidqv6eC3Tw8RznJVH3RUxL4qmyFlb5TRgBtVF0mNmTBo

¹² See 21 U.S.C. § 881 (2018).

¹³ See Section 287(g) of the Immigration and Nationality Act (codified as 8 U.S.C. § 1357(g)).

¹⁴ The two primary programs in use are the Homeland Security preparedness Grant Program, which offers grants for equipment to prepare for the policing of terrorism, and the “1033 Program”, which distributes old military equipment from the Department of Defense (10 U.S.C. § 2576a (2018)).

departments where officers accept a role as guardians, with a commitment to protect and serve everyone, even the people they are arresting.”¹⁵

Accordingly, in this memo we detail a number of policy recommendations for the Commission to consider. In general, these recommendations fall under the following categories:

- (1) Data Collection and Transparency
- (2) Oversight and Accountability
- (3) Limiting Use of Force
- (4) Reducing Police Militarization
- (5) Limiting Arrests
- (6) Justice Reinvestment

* * *

To begin, we note some of the most important policing-related policy changes that **passed the 2020 General Assembly** session:

- Requiring the collection and reporting of certain data from motor vehicle or investigatory stops and the reporting of any complaints of excessive force; prohibiting biased policing (Acts of Assembly 1165)
- Requiring body camera policies to be developed by each locality purchasing such cameras (Acts of Assembly 123)
- Requiring the recording of custodial interrogations by law enforcement (Acts of Assembly 1126)
- Prohibiting police officers from inquiring into the immigration status of victims or witnesses of most crimes (Acts of Assembly 273)
- Requiring data collection on incidents involving school resource officers (Acts of Assembly 1039), revised public Memoranda-of-Understanding between school divisions and local law enforcement agencies (Acts of Assembly 52), as well as new training standards for SROs (Acts of Assembly 638)
- Requiring a criminal conviction in order for civil asset forfeiture to be completed (Acts of Assembly 1000)

¹⁵ Reforming Policing in America 2020, by Equal Justice Initiative, available at <https://eji.org/issues/policing-in-america/>

POLICY RECOMMENDATIONS

A. Improve Data Collection and Transparency

BACKGROUND: Virginia tracks very little data on police-citizen encounters. The state's arrest data, however, is highly disproportionate, suggesting that Virginia's communities of color might be overpoliced.¹⁶ Those departments that have released data on police stops in general have found that Black people especially are overrepresented in both stops and reports.¹⁷ In good news, the General Assembly passed a statute this year requiring the collection and reporting of traffic stop data as well as excessive force complaints.¹⁸ In addition, Virginia already has an annual reporting requirement on officer-involved shootings, though it is poorly enforced. We believe the language in both statutes can be strengthened.

RECOMMENDATIONS:

1. **Expand the requirements of the new Community Policing Act¹⁹ to include data collection on street stops²⁰ and all uses of force.²¹** While the statute passed this year is a huge step in the right direction, many citizens encounter police on the streets, not in their cars. If we only require data on motor vehicle stops, we may neglect more racially disparate forms of policing. In other cities, street stops have been found to be a source of racially

¹⁶ Supra note 3.

¹⁷ Charlottesville, Richmond, and Bedford have all released data in the last decade, and Fairfax is currently working on a project. See, e.g.: Ali Rockett, "Richmond police data indicate racial disparities in contacts with public; activists call for change." Richmond Times Dispatch, (May 2, 2019), https://www.richmond.com/news/local/crime/richmond-police-data-indicate-racial-disparities-in-contacts-with-public-activists-call-for-change/article_c16e43fa-53f1-5a6f-ba64-b37e3cfce3e6.html; see also Editorial: What's Missing from the Community Policing Conversation? Richmond Times Dispatch (June 8, 2020), https://www.richmond.com/opinion/editorial/editorial-whats-missing-from-the-community-policing-conversation/article_6ed663f6-cffa-5658-b9cf-62959d7db3fc.html

¹⁸ Acts of Assembly, Chapter 1165.

¹⁹ **§ 52-30.2. Prohibited practices; collection of data. [CURRENT STATUTE]**

A. *No State Police officer shall engage in bias-based profiling in the performance of his official duties.*

B. *State Police officers shall collect data pertaining to motor vehicle or investigatory stops to be reported into the Community Policing Reporting Database. State Police officers shall submit the data to their commanding officers, who shall forward it to the Superintendent of State Police.*

C. *Each time a law-enforcement officer or State Police officer stops a driver of a motor vehicle, such officer shall collect the following data based on the officer's observation or information provided to the officer by the driver: (i) the race, ethnicity, age, and gender of the person stopped; (ii) the reason for the stop; (iii) the location of the stop; (iv) whether a warning, written citation, or summons was issued or whether any person was arrested; (v) if a warning, written citation, or summons was issued or an arrest was made, the warning provided, violation charged, or crime charged; and (vi) whether the vehicle or any person was searched.*

D. *Each state and local law-enforcement agency shall collect the number of complaints the agency receives alleging the use of excessive force. [Other provisions give additional information about reporting to a statewide database]*

²⁰ 2.6 Recommendation, President Obama's 21st Century Policing Task Force, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

²¹ 2.2 Recommendation, President Obama's 21st Century Policing Task Force, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

disparate policing.²² We recommend requiring data collection and reporting on street stops and ‘frisks’ as well.

In addition, the statute as passed only requires the reporting of *complaints* of excessive uses of force—it does not require accounting for uses of force that might be lawful and, therefore, do not result in a complaint but still contribute to racial disparities. We recommend adding language that would require the collection of demographic data and narrative information regarding *any* use of force [hands on bodies]. This would both increase the data we have on uses of force in Virginia (even lawful ones), and provide for more effective data analysis and decision-making. [In the appendix, we suggest a standard data collection requirement for the Commonwealth, based on expert recommendations.](#)

Lastly, we raise the concern that this statute appears to create a mandate with no adequate enforcement mechanism. Based on the findings below (see A2), we believe this poses a risk of underreporting. Like the recommendation below, we recommend sanctions for delinquent departments (or financial incentives for participating departments).

- 2. Require more detail regarding officer-involved shootings,²³ and enforce department reporting.²⁴** Virginia currently collects data from police departments on any officer involved shootings and reports it in the annual “Crime in Virginia” report, per Virginia Code § 52-28.2.²⁵ However, the data reported is often difficult to translate into effective accountability, because it includes no narrative and very little information. Worse, the data reported seems to be incomplete: according to one Virginia newspaper’s independent investigation, nearly a third of police-involved shootings went undocumented in the year 2018.²⁶ We recommend adding an enforcement mechanism for this section with sanctions for delinquent departments. We also recommend requiring narrative details, as well as data on the involved civilian’s demographics, in order to improve data collection and analysis.

²² See, e.g. *Floyd v. City of New York* (2013)

²³ 2.2 Recommendation, President Obama’s 21st Century Policing Task Force, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

²⁴ 2.3 Recommendation, President Obama’s 21st Century Policing Task Force, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

²⁵ **§ 52-28.2. Reporting of officer-involved shootings; inclusion in annual Crime in Virginia report.** [CURRENT STATUTE] *The Department of State Police shall include any officer-involved shooting and whether such shooting was determined to be justified in the annual Crime in Virginia report. Any law-enforcement or public safety officer required to make such report shall receive training concerning such reporting requirement. For the purposes of this section, "officer-involved shooting" means the discharge of a firearm by a law-enforcement officer, as defined in § 9.1-101, that results in the death or serious bodily injury of another.*

²⁶ Richard Chumney, “Virginia Police Fair to Report Nearly One in Three Police Shootings,” *The News & Advance* (Aug. 31, 2019), https://www.newsadvance.com/news/local/virginia-police-departments-fail-to-report-nearly-one-in-three-police-shootings/article_cd23f28c-9145-5f85-a1d2-8af429733292.html

3. **Expand the data collections statute into an enforceable racial profiling law.** Many states in recent years have passed racial profiling laws to protect communities of color from being targeted or harassed by police or other agents of government.²⁷ These laws, when enforceable, can provide important rights to people who are left behind by gaps in federal constitutional enforcement. While the Community Policing Act (§ 52-30.1 through 30.2) is a good start, additional provisions should be added to improve enforcement mechanisms, such as creating explicit civil liability for officers or departments who violate the policy. [A sample state racial profiling law, from the NAACP, is in the appendix.](#)

4. **Repeal record-protection laws that exempt law enforcement officers from ordinary oversight.** While Virginia has made substantial strides toward creating a more transparent system of government,²⁸ this progress is undermined by existing state law that exempts law enforcement from many of the requirements set forth in Virginia’s Freedom of Information Act (FOIA).²⁹ For example, these record-protection laws exempt non-criminal law enforcement records—such as internal affairs investigations and personnel files³⁰—from public oversight. As an illustration of the barriers that these FOIA exemptions create, a recent FOIA request for every use-of-force report from the past decade was denied by Norfolk officials under these record-protection laws.³¹ Additionally, given the overbroad scope of subsection B(1) of VA Code § 2.2 – 3706,³²

²⁷ Around half of states have some law on racial profiling. Eleven states ban the practice. But many provide no specific remedy. Only two—Kansas and Rhode Island—create a private cause of action, which the NAACP maintains is an essential element to an effective law. Rachel Harmon, *The Law of the Police*, *supra* note 10.

²⁸ *Supra* note 14

²⁹ **§2.2-3706. Disclosure of law-enforcement and criminal records; limitations. [CURRENT STATUTE]**

B. Discretionary releases. The following records are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law: 9. Records of (i) background investigations of applicants for law-enforcement agency employment, (ii) administrative investigations relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement agencies that are made confidential by law [...]

³⁰ *Id.* at subsection D (noncriminal records. Public bodies (i) engaged in emergency medical services, (ii) engaged in fire protection services, (iii) engaged in criminal law-enforcement activities, or (iv) engaged in processing calls for service or other communications to an emergency 911 system or any other equivalent reporting system may withhold those portions of noncriminal incident or other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature where the release of such information would jeopardize the safety or privacy of any person. Access to personnel records of persons employed by a law-enforcement agency shall be governed by the provisions of subdivision B 9 of this section and subdivision 1 of § 2.2-3705.1, as applicable.)

³¹ Johnathan Edwards, “Norfolk Police Use Force Hundreds of Times – and Keep All the Reports Secret,” *The Virginian-Pilot* (Mar. 15, 2019), https://www.pilotonline.com/government/local/article_33b1ede6-4697-11e9-9f51-07dd913ac8d2.html.

³² §2.2-3706 at subsection B(1) (*B. Discretionary releases. The following records are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law: 1. Criminal investigative files, defined as any documents and information, including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information subject to release in accordance with [...]*)

Virginians have been effectively barred from accessing nonactive criminal investigative files of police misconduct even after the corresponding investigation has closed.³³ We recommend that the Commission address these obstacles to transparency by proposing to repeal or otherwise substantially limit their reach. Specifically, the Commission should consider recommending the repeal of the noncriminal provisions set forth in VA Code § 2.2 – 3706. Further, the Commission should consider amending subsection B(1) of § 2.2 – 3706 so as to narrow its overbroad scope. For example, the Commission could recommend that criminal investigative files be subject to FOIA, but only when the investigation has been completed and closed, and all sensitive, personally identifying information unrelated to the accused officer’s identity and otherwise unrelated to the public’s interest has been sealed or redacted.

- 5. Empower and mandate the establishment of local or regional independent civilian review boards statewide.** Given the prevailing challenges with transparency³⁴ and data management³⁵ in Virginia, we recommend that the Commission consider supporting some form of mandatory civilian complaint review boards (CCRBs) with investigative, auditing, and disciplinary authority across the Commonwealth.

For example, Virginia could mandate the existence of a CCRB in each locality or each region (Central, Eastern, Hampton Roads, Northern, Southside, Southwest, Valley, and West Central) to increase community input and public oversight. Each independent body would function as an oversight and data collection entity, collaborating with local officials to establish data collection and management standards pursuant to VA Code §9.1-102.³⁶

To ensure that compliance with such data management standards are met by police departments across the Commonwealth, and to empower CCRBs to conduct effective misconduct investigations, we also recommend the inclusion of a subpoena enforcement provision, pursuant to Va Code 2.2-3703.1,³⁷ within the statutory language that

³³ Dani Kass, “Information from Virginia Criminal Investigations Largely Exempt from FOIA,” The Daily Progress, March 28, 2015, https://www.dailyprogress.com/news/local/information-from-virginia-criminal-investigations-largely-exempt-from-foia/article_2d86cb46-d597-11e4-87c7-c7d392ca4051.html.

³⁴ *Supra* note 23

³⁵ *Supra* note 16

³⁶ **§ 9.1-102. Powers and duties of the Board and the Department. [CURRENT STATUTE]**

The Department, under the direction of the Board, which shall be the policy-making body for carrying out the duties and powers hereunder, shall have the power and duty to: 1. Adopt regulations, pursuant to the Administrative Process Act (§2.2-400 et seq.), for the administration of this chapter including the authority to require the submission of reports and information by law-enforcement officers within the Commonwealth. Any proposed regulations concerning the privacy, confidentiality, and security of criminal justice information shall be submitted for review and comment to any board, commission, or committee or other body which may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof. . .

³⁷ **§2.2-3703.1. Disclosure pursuant to court order or subpoena [CURRENT STATUTE]**

establishes these boards. There is current political support on both the federal³⁸ and state³⁹ levels for this change – which renders this recommendation more salient.

Consistent with this proposal, we recommend that the General Assembly either (1) require each board to negotiate with its local police department a pre-determined disciplinary matrix to determine what outcomes will be imposed following a board’s finding of fact, or (2) mandate that DCJS develop a statewide disciplinary matrix that incorporates civilian input. This ‘matrix’ would be binding on a local department once a CCRB’s findings of fact are final. The matrix approach, coupled with the subpoena power provision outlined above, ensures that each CCRB would have actual enforcement authority. Given the collaborative nature of this matrix approach,⁴⁰ we are confident that an improvement in transparency and stronger police-community relations will result.

Research suggests that truly independent CCRBs – that is, ones that are completely autonomous from local police departments and receive the necessary political and financial supports to carry out their duties – hold the “promise of improving public safety and renewing public trust in police, especially within the African-American community.”⁴¹ While there have been challenges in other jurisdictions associated with CCRB effectiveness,⁴² such challenges are mostly a by-product of poor structural and political support.⁴³ Recent research suggests that cities can establish effective and efficient Civilian Review Boards, if they are properly empowered with investigative and disciplinary

Nothing contained in this chapter shall have any bearing upon disclosures required to be made pursuant to any court order or subpoena. No discretionary exemption from mandatory disclosure shall be construed to make records covered by such discretionary exemption privileged under the rules of discovery, unless disclosure is otherwise prohibited by law.

³⁸ Kelsey Jones, “Congresswoman supports civilian review of police force complaints in Loudoun County,” LocalDVM.com, June 4, 2020, <https://www.localdvm.com/news/virginia/congresswoman-supports-civilian-review-of-police-force-complaints-in-loudoun-county/>

³⁹ Jackie DeFusco, “Virginia lawmakers planning police reform legislation,” WFXR, June 05, 2020, <https://www.wfxrtv.com/news/commonwealth-news/virginia-lawmakers-planning-police-reform-legislation/>; see also Mel Leonor and Justin Mattingly, “Police Reform Will Be At Center of General Assembly’s Special Session,” Richmond Times-Dispatch, June 13, 2020, https://www.richmond.com/news/virginia/police-reform-on-tap-during-general-assembly-special-session/article_0193e868-a9cd-5059-9b4c-79476d6bf115.html.

⁴⁰ Udi Ofer, Getting It Right: Building Effective Civilian Review Boards to Oversee Police, Seton L. Rev. May 16, 2018, <https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1572&context=shlr>

⁴¹ Scholars Strategy Network, “How Civilian Review Boards Can Further Police Accountability and Improve Community Relations,” June 25, 2018, <https://scholars.org/brief/how-civilian-review-boards-can-further-police-accountability-and-improve-community-relations>

⁴² “When It Comes to Police Misconduct, Body-Worn Cameras Are Slow to Come,” WNYC, July 22, 2019, <https://www.wnyc.org/story/police-misconduct-body-worn-camera-videos-slow-come/>.

⁴³ New York Civil Liberties Union (NYCLU), *Mission Failure: Civilian Review of Policing in New York City – Summary of Findings*, (date accessed: June 4, 2020), <https://www.nyclu.org/en/mission-failure-civilian-review-policing-new-york-city-summary-findings> (stating that political officials are often silently complicit in this standoff). Faced with this political dynamic, the oversight agency’s board members and top administrators often defer to the police. This dynamic has undermined the civilian-review function in many United States cities, and this is the case in New York City as well.

authority.⁴⁴ By enacting state-level legislation empowering such independent authorities in all municipalities statewide, every Virginia community – and especially those facing more pronounced disparities⁴⁵ and over-policing⁴⁶ – will have an independent authority to whom they can make their voices heard.

While we understand that this is one of the broader and more dramatic recommendations we have included for the Commission’s review, we also believe that, given the range of support that CCRB’s are gathering across the country, it is an important recommendation for the Commission to consider. [For an additional write-up of the possible CCRB models, as well as current CCRBs in Virginia, see the appendix.](#)

B. Improve Officer Accountability.

BACKGROUND: It seems to happen all too often in America: an officer investigated and terminated for misconduct is simply hired right back.⁴⁷ Officers with a rap sheet of complaints—like the officer who killed George Floyd⁴⁸—keep their badges for years.⁴⁹ Much of the frustration of protesters is over this systemic protection of officers who regularly violate community trust. Often the system protects officers to a fault; since the officer knows his local prosecutor well, the prosecutor is reluctant to charge a crime. Officers are typically given paid leave during misconduct investigations, and they are far too often held for even egregious acts committed on the job. Even departments and localities are often not held responsible.⁵⁰ Though officers in Virginia can be suspended for misconduct or violating department policy, *there is no statutory process in Virginia for the decertification of officers for misconduct.* Only an actual criminal conviction will end an officer’s career, and these are rare. This accountability system is inadequate for detecting problem officers, correcting their behavior, or—when needed—removing them from the force.

⁴⁴ *Supra* note 31.

⁴⁵ Ali Rockett, “Richmond Police Data Indicate Racial Disparities in Contacts with Public,” Richmond Times-Dispatch, May 2, 2019, https://www.richmond.com/news/local/crime/richmond-police-data-indicate-racial-disparities-in-contacts-with-public-activists-call-for-change/article_c16e43fa-53f1-5a6f-ba64-b37e3cfce3e6.html

⁴⁶ Justin Mattingly, Stoney Backs ‘Marcus Alert’ As Calls for Police Reform Grow, Richmond Times-Dispatch, June 1, 2020. https://www.richmond.com/news/local/crime/watch-now-stoney-backs-marcus-alert-as-calls-for-police-reform-grow/article_adc1515a-c14f-55fc-9dcf-7e88aff51088.html

⁴⁷ Kimbriell Kelly, et al. “Fired/Rehired,” The Washington Post (Aug. 3, 2017), <https://www.washingtonpost.com/graphics/2017/investigations/police-fired-rehired/>

⁴⁸ Michelle Mark, “18 Complaints in 19 Years, and a murder charge: What we know about ex-Minneapolis police officer Derek Chauvin,” Insider (June 9, 2020), <https://www.insider.com/derek-chauvin-minneapolis-police-background-life-2020-6>

⁴⁹ John Kelly & Mark Nichols, “We Found 85,000 cops who’ve been investigated for misconduct. Now you can read their records.” USA Today (June 11, 2020), <https://www.usatoday.com/in-depth/news/investigations/2019/04/24/usa-today-revealing-misconduct-records-police-cops/3223984002/>

⁵⁰ Jeff Bourne & Jay Jones, “Removing the Shield to justice: reforming sovereign immunity,” Richmond Times Dispatch (June 9, 2020), https://www.richmond.com/opinion/columnists/jeffrey-m-bourne-and-jay-jones-column-removing-the-shield-to-justice-reforming-sovereign-immunity/article_d15f1240-6d80-51fa-b6c0-dc0dfe759c25.html

RECOMMENDATIONS:

1. **Add a provision to §15.2-1707⁵¹ that provides for the decertification of police officers who have participated in a pattern of misconduct.** Current Virginia statute provides for the decertification of officers who fail to complete training requirements, who are found to use drugs, or who are convicted of a crime. It does not provide for the decertification of officers who have been found to violate department policy or regulations, or who have a record of misconduct. The ACLU of Virginia suggests this change.⁵²
2. **Make police disciplinary records public statewide.**⁵³ Virginia's current "civilian protection in cases of police misconduct" statute⁵⁴ is a particularly weak law that merely requires the availability of complaint processes and the maintenance of complaint records. It does not solve the problem of officers found to have been repeatedly involved in incidents or complaints, nor provide a backstop for citizens who have experienced police misconduct, complained about it, and found no recourse. Both the Cato Institute⁵⁵ and Campaign

⁵¹ §15.2-1707. Decertification of law-enforcement officers. [CURRENT STATUTE]

A. The sheriff, chief of police, or agency administrator shall notify the Criminal Justice Services Board in writing within 48 hours of becoming aware that any certified law-enforcement or jail officer currently employed by his agency has (i) been convicted of or pled guilty or no contest to a felony or any offense that would be a felony if committed in the Commonwealth, (ii) been convicted of or pled guilty or no contest to a Class 1 misdemeanor involving moral turpitude or any offense that would be any misdemeanor involving moral turpitude, including but not limited to petit larceny under § 18.2-96, or any offense involving moral turpitude that would be a misdemeanor if committed in the Commonwealth, (iii) been convicted of or pled guilty or no contest to any misdemeanor sex offense in the Commonwealth, another state, or the United States, including but not limited to sexual battery under § 18.2-67.4 or consensual sexual intercourse with a minor 15 or older under clause (ii) of § 18.2-371, (iv) been convicted of or pled guilty or no contest to domestic assault under § 18.2-57.2 or any offense that would be domestic assault under the laws of another state or the United States, (v) failed to comply with or maintain compliance with mandated training requirements, or (vi) refused to submit to a drug screening or has produced a positive result on a drug screening reported to the employing agency, where the positive result cannot be explained to the agency administrator's satisfaction. [...]

⁵² ACLU of Virginia, Accountability in Virginia Policing: An Agenda for Reform (May 2017), https://acluva.org/sites/default/files/field_documents/accountability_in_virginia_policing_agendaforreform_may2017.pdf

⁵³ 1.3 Recommendation, President Obama's 21st Century Policing Task Force, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

⁵⁴ § 9.1-600. Civilian protection in cases of police misconduct; minimum standards. [CURRENT STATUTE]

A. State, local, and other public law-enforcement agencies, which have ten or more law-enforcement officers, shall have procedures as established in subsection B, allowing citizen submission of complaints regarding the conduct of the law-enforcement agency, law-enforcement officers in the agency, or employees of the agency.

B. Law-enforcement agencies shall ensure, at a minimum, that in the case of all written complaints:

1. *The general public has access to the required forms and information concerning the submission of complaints;*
2. *The law-enforcement agency assists individuals in filing complaints; and*
3. *Adequate records are maintained of the nature and disposition of such cases.*

⁵⁵ Jonathan Blanks, Testimony before the U.S. Commission on Civil Rights (2015), <https://www.cato.org/publications/testimony/testimony-us-commission-civil-rights-briefing-police-practices-use-force>

Zero⁵⁶ suggest making law enforcement disciplinary records and complaints public, or accessible via FOIA, to improve trust and increase accountability mechanisms. We recommend the statute's amendment to make these records publicly accessible.

3. **Require that alleged crimes committed by police officers be investigated by the attorney general's office.** Currently, criminal allegations against a police officer are handled by the local prosecutor, who may personally know the involved officer and whose investigation, and prosecution (if any), will be tainted, at a minimum, by the appearance of bias, if not actual bias itself. This prevents full accountability. While prosecutors can recuse themselves, it would be wiser and appear fairer for Virginia to adopt a statewide policy on these investigations. Campaign Zero suggests a permanent "Special Prosecutor's Office" at the state level for cases of police violence. This separate office would be especially important for incidents that meet a certain standard, such as police killings and non-fatal shootings, or any application of force that causes serious injury or death.⁵⁷ The staff who handle such cases should be competent and immune from politics; one avenue is to require the state-level prosecutor to be classified employees and to require investigators to have experience working on violent crime.

An alternative proposal offered by some is to require that prosecutions of local law enforcement be handled by prosecutors from different jurisdictions than the officer.

4. **Increase accountability for officers who act tortiously by revising sovereign and qualified immunity standards.**⁵⁸ In Virginia, the sovereign immunity standard, and the official immunity of individual officers that stems from it, prevent adequate accountability for poor policing, and leave civilians harmed by poor policing without relief.

Currently, if localities engage in actions considered "governmental" (like policing), then cities and towns are immune from suit on the basis of such actions.⁵⁹ Likewise, city employees, such as police officers, receive a form of qualified official immunity based on the municipalities' sovereign immunity power, with very few exceptions (this is unrelated to the federal standard of the same name, which is a federal law and therefore outside the scope of this memo).⁶⁰ For a case to overcome Virginia official immunity, the official's

⁵⁶ Campaign Zero is an organization that integrates community calls for reform with research-based policy recommendations, founded by activist Deray McKesson. Fair Police Contracts, Campaign Zero, <https://www.joincampaignzero.org/contracts>

⁵⁷ Independent Investigations and Prosecutions, Campaign Zero, <https://www.joincampaignzero.org/investigations>

⁵⁸ 1.3 Recommendation, President Obama's 21st Century Policing Task Force, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

⁵⁹ https://www.vsb.org/docs/valawyer magazine/apr00anthony_mcmahon.pdf;

⁶⁰ Why All the King's Horses and All the King's Men Couldn't Put Sovereign Immunity Back Together Again: An Analysis of the Test Created in *James v. Jane*, 11 Rich. Pub. Int. L. Rev. 1; *James v. Jane*, 221 Va. 43, 282 S.E.2d 864 (1980); *McBride v. Bennett*, 288 Va. 450, 764 S.E.2d 44 (2014) (explaining that municipal employees charged with negligence have state given qualified immunity under the sovereign immunity doctrine based on the following

actions must fit into narrow and complex exceptions to the standard, to determine whether the official was truly acting within ‘the scope of a governmental task.’ Typically, Virginia courts have offered broad protection to police officers on this basis and declined to impose liability on municipalities-- even when an officer harmed a civilian in the most heinous way: rape.⁶¹

We recommend lowering and clarifying the standard for a more clear, consistent, and equitable approach, by enacting a statute with clear language.⁶² This would improve local incentives to supervise and train officers properly, and would ensure that civilians harmed by officers acting improperly are made whole, at least financially. One approach is to statutorily introduce provisions requiring municipal employers to “supervise, train, and control their employees,” which will make municipalities liable for failures of supervision or training and incentivize better practices. Additionally, statutes could make employer localities explicitly vicariously liable for their employees’ actions while serving as agents of the locality, for example in police uniform.⁶³ Additionally, we recommend statutory language that specifically limits qualified official immunity for police when they act in grossly negligent, intentionally tortious, or in a reckless manner.

Additional suggestions to increase financial accountability include requiring officers to take an unpaid suspension instead of paid administrative leave or desk duty during investigations of certain types of misconduct. Officers can be forbidden from using sick leave or vacation time after being charged with a felony or while being investigated for police violence. Officers’ pensions or other benefits as state employees could be forfeit for misconduct or constitutional rights violations.

Finally, the Commonwealth may consider repealing or amending the very protective “Officer Bill of Rights” grievance procedure at §9.1-500 through 9.1- 507, which prevents accurate and effective accountability, according to Campaign Zero.⁶⁴ Specifically, officers

summary of the test created in *James v. Jane*: “ (1) the nature of the function performed by the employee; (2) the extent of the state's interest and involvement in the function; (3) the degree of control and direction exercised by the state over the employee; and (4) whether the act complained of involved the use of judgment and discretion.” The factors serve to determine if the employee is acting within a governmental task (in which case there is immunity) or a proprietary or ministerial task (where there is no immunity.); *Niese v. City of Alexandria*, 264 Va. 230, 564 S.E.2d 127 (2002) (holding that a municipality is immune from liability when a police officer commits multiple acts of rape during the course of an investigation because the investigation itself was “a governmental function.” The city was also found to be immune from liability in retaining the officer as an employee after becoming aware of this intentional tort.); See also § 8.01-195.3. Commonwealth, transportation district or locality liable for damages in certain cases.

⁶¹ See *Niese v. City of Alexandria*, 264 Va. 230, 564 S.E.2d 127 (2002).

⁶² *James v. Jane*, 221 Va. 43, 282 S.E.2d 864 (1980) (stating there is culpability when acting in a grossly negligent manner.)

⁶³ Bourne & Jones, *supra* note 50.

⁶⁴ *Supra* note 38.

should not be afforded greater rights during an investigation or disciplinary hearing than ordinary citizens or employees might receive.

5. **Mandate statewide adoption of an “early warning system.”** As few as 2% of officers are behind some 50% of citizen complaints.⁶⁵ Studies show that fixing issues with these problem officers before they become serious can be an effective way to reduce police complaints. Based on citizen complaints and performance data, departments can identify an officer, intervene with both education and deterrence, and then monitor continued performance. In a controlled study of three cities’ departments, complaints dropped by over half after intervention.⁶⁶

C. Address use-of-force through legislation and trainings.

BACKGROUND: Many of the protests of the last few weeks have converged around the problem of officers using tactics that are unnecessarily violent, and using force when other strategies would be better for public safety. Luckily, many police departments have been innovating in recent years, demonstrating models of what better policing could look like. Camden, New Jersey provides a model of what a force-as-last-resort strategy could look like.⁶⁷ Camden followed the guidelines created by the Policing Project on use-of-force policies. [See the appendix to read through both the policy and the guidelines.](#)

RECOMMENDATIONS:

1. **Require the statewide adoption of use-of-force policies that meet certain standards.** In the past, Virginia’s DCJS has created a model eyewitness ID policy⁶⁸ that police departments overwhelmingly adopted, and this year DCJS is developing a model body-cam policy for departments to adapt and adopt.⁶⁹ We are proposing to go further than mere development of model policies; we are urging the development of mandatory policies.

Specifically, DCJS could develop a model use-of-force policy, or force-as-last-resort policy, based on best practices from other jurisdictions. A model use-of-force policy should include, at a minimum, bans on chokeholds and strangleholds, required warnings before shooting, required withdrawal of force once the threat has abated, and a duty to

⁶⁵ Samuel Walker et al., Early Warning Systems: Responding to the Problem Police Officer, *National Institute of Justice* (2001), <https://www.ncjrs.gov/pdffiles1/nij/188565.pdf>

⁶⁶ *Id.*

⁶⁷ James Doubek, Former Chief of Reformed Camden, N.J. Force: Police Need Consent of the People, N.P.R. (June 8, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/08/872416644/former-chief-of-reformed-camden-n-j-force-police-need-consent-of-the-people>

⁶⁸ Brandon Garrett, Self-Policing: Dissemination and Adoption of Police Eyewitness Policies in Virginia, 105 Va. L. Rev. Online 96 (2019), <https://www.virginialawreview.org/volumes/content/self-policing-dissemination-and-adoption-police-eyewitness-policies-virginia>

⁶⁹ Acts of Assembly Chapter 123

intervene and stop excessive force on fellow officers, among other restrictive policies shown to reduce police killings.⁷⁰ Additionally, we recommend Virginia prohibit the use of force to execute non-violent felony arrests or nonviolent misdemeanor arrests where circumstances don't present imminent threat of harm to life or limb, as well as limit the use of force to prevent escape for nonviolent offenses. Through statute the legislature should require the adoption of these policies by a certain deadline, and set certain standards for the policies that all departments must adopt.

2. **Increase time spent on force-as-last-resort strategies in DCJS officer training; reduce or reallocate time spent in current force tactics training.**⁷¹ Essential training modules for officers planning to use force-as-last-resort in their policing will include: de-escalation, bias (not just racial, but LGBT and disability biases, which often interact with race), distance and cover, verbal communication, and mental health/crisis training. While some of these topics are covered now in DCJS's training (or in CIT programs), it is highly likely not enough time is spent on them.⁷² It's also not clear if the trainings are effective or if there is officer buy-in. The Commission should recommend a review of the DCJS training program.
3. **Add more community members to the DCJS Training Committee.**⁷³ Under current law, the membership of the Training Committee is dominated by members of traditional law enforcement and representatives of the criminal justice system.⁷⁴ Only one "citizen representing community interests" is present. Arguably, adding more diverse voices to the training committee could improve the reflection of community priorities in training.

⁷⁰ <https://8cantwait.org/>

⁷¹ 2.2 Recommendation, President Obama's 21st Century Policing Task Force, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

⁷² Virginia's current use-of-force training curriculum is found here: <https://www.dcjs.virginia.gov/law-enforcement/manual/standards-performance-outcomes/law-enforcement-officers/defensive-tactics-use-of-force>

⁷³ 2.2 Recommendation, President Obama's 21st Century Policing Task Force, https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

⁷⁴ **§ 9.1-112. Committee on Training; membership. [current statute]**

There is created a permanent Committee on Training under the Board that shall be the policy-making body responsible to the Board for effecting the provisions of subdivisions 2 through 17 of § 9.1-102. The Committee on Training shall be composed of 15 members of the Board as follows: the Superintendent of the Department of State Police; the Director of the Department of Corrections; a member of the Private Security Services Advisory Board; the Executive Secretary of the Supreme Court of Virginia; two sheriffs representing the Virginia State Sheriffs Association; two representatives of the Chiefs of Police Association; the active-duty law-enforcement officer representing police and fraternal associations; the attorney for the Commonwealth representing the Association of Commonwealth's Attorneys; a representative of the Virginia Municipal League; a representative of the Virginia Association of Counties; a regional jail superintendent representing the Virginia Association of Regional Jails; one citizen representing community interests; and one member designated by the chairman of the Board from among the other appointments made by the Governor.

D. Revise Virginia’s Laws on Military-Grade Equipment

BACKGROUND: Virginia police departments have increased their acquisition of military equipment in recent years,⁷⁵ through the federal Defense Department's Military Surplus Property Program (1033 program) and the Homeland Security terrorism preparedness grants.⁷⁶ This equipment, made available primarily due to military surplus, includes firearms, tactical gear, and armored vehicles, amongst other things.⁷⁷ Studies have shown that access to such equipment increases instances of police killings of civilians.⁷⁸ Additionally, Black Americans are statistically more likely to be killed by militarized police,⁷⁹ thereby pointing to a potential increased exposure to fatal police encounters for Black Virginians should more Virginia police departments militarize themselves. The perceived benefit of the 1033 program, supposedly portrayed by a dramatic drop in violent crime, conflicts with research that suggests increased militarization does not significantly improve officer safety.⁸⁰

We recognize that Virginia, with its vast array of federal and military installations and offices, has a number of potential terrorist targets, and that, sadly, our recent history also includes mass shootings. It is possible our law enforcement might need access to specialized equipment to effectively respond to crises like these. However, we recommend that the Commission examine, or request a study of, the implications of the militarization of the police from an operational and budgetary perspective; the proper role of this capacity, if any; and whether there should be limits, or more oversight, for deployment of both the equipment and its accompanying tactics. It could be that more narrowly focusing the use of this capacity would have both budgetary and community benefits.

E. Reduce Arrests

BACKGROUND: Experts from numerous universities and the Policing Project argue that many arrests are simply not worth the cost: “Arrests impose substantial harm and are often unnecessary to promote public safety, even when criminal charges are appropriate. States should restrict arrests for low- level offenses and discourage arrests for other offenses where

⁷⁵ Dave Ress, Police Acquisition of Military Equipment Soars as Critics Decry Militarization of Law Enforcement, The Daily Press (June 7, 2020), <https://www.dailypress.com/news/crime/dp-nw-police-military-surplus-20200607-y26jfkaxjgkjesg66tdjuvf4i-story.html>

⁷⁶ Defense Logistics Agency, 1033 Program FAQs, <https://www.dla.mil/DispositionServices/Offers/Reutilization/LawEnforcement/ProgramFAQs.aspx>; https://cuellar.house.gov/uploadedfiles/dhs_fy19-allocation-announcement.pdf

⁷⁷ Virginia State Police, Military Surplus Property Program, <https://www.vsp.virginia.gov/PropertyLogistics-1033.shtm#Application>

⁷⁸ Casey Delehanty, et. al., Militarization and police violence: The case of the 1033 program (2017), <https://journals.sagepub.com/doi/full/10.1177/2053168017712885>

⁷⁹ Federico Masera, Bringing War Home: Violent Crime, Police Killings and the Overmilitarization of the US Police 28 (2016), <https://ideas.repec.org/jmp/2016/pma1994.pdf>

⁸⁰ Id.

summonses and citations could replace them adequately.”⁸¹ Several years ago, New York City took this to heart, deciding to decriminalize five minor offenses from which a quarter million criminal summonses each year were made-- parks violations, public urination, open container violations, littering and noise violations-- many of which were disproportionately affecting low income, minority communities.⁸² While individuals still face consequences for these offenses, they do not have to miss work for court, they face no risk of arrest or an escalating encounter with police, and they will not end up with an unnecessary criminal record.⁸³ In short, the program has seen a reduction of the high cost of arrests. In another example, many departments during the coronavirus limited their arrest policies to avoid physical contact when unnecessary, relegating many low-level crimes that typically could result in arrest to simply involve “cite and release” practices or summonses, and found that public safety did not markedly change.⁸⁴

RECOMMENDATIONS:

1. **Decriminalize high volume, low-level offenses and use an administrative or civil court to handle citations, tickets, and fines.** Virginia should review arrest data for low-level, high volume offenses that could be made civil, rather than criminal, and adopt the New York model of issuing a civil ticket or fine. By decriminalizing a small subset of low-level offenses, the state reduces police discretion and helps police departments focus their resources on more urgent public safety situations.

F. Consider Police Funding Reallocation

BACKGROUND: One of the loudest calls of protesters in the wake of George Floyd’s death has been to “defund” the police and reallocate significant portions of police budgets to other purposes. Central to that proposal is the idea that the criminal justice system is ill-equipped to respond to issues like homelessness, mental health crises, substance use, or school discipline. Yet in recent years American police budgets have increased steadily, often outstripping other social services.⁸⁵ Even at the state level in Virginia, which is not where police budgets are mainly

⁸¹ Barry Friedman, et al. Changing the Law to Change Policing: First Steps.

https://law.yale.edu/sites/default/files/area/center/justice/document/change_to_change_final.pdf

⁸² New York City Council, The Criminal Justice Reform Act, <https://council.nyc.gov/legislation/criminal-justice-reform/>

⁸³ Id.

⁸⁴ See, e.g. Alexander Mallin & Luke Barr, “Police implement sweeping policy changes to prepare for coronavirus spread,” ABC News (Mar. 18, 2020), <https://abcnews.go.com/US/police-implement-sweeping-policy-prepare-coronavirus-spread/story?id=69672368>

⁸⁵ Derek Hawkins, et al, “Defund the Police gains traction as cities seek to respond to demands for major law enforcement change,” The Washington Post (June 7, 2020), <https://www.washingtonpost.com/nation/2020/06/07/protests-defund-police/> (describing academics and officials “seriously considering ways to scale back their police departments and redirect funding to social programs”); “Social Distance: Would Defunding the Police Make us Safer?”, The Atlantic (June 6, 2020), <https://www.theatlantic.com/health/archive/2020/06/would-defunding-police-make-us-safer/612766/> (describing police budgets as massive, for example in Minneapolis: police budget is \$193 million, versus only \$31 million for housing, only \$400,000 for crime prevention and only \$250,000 for at-risk youth programs); Maya Dukmasova, “Abolish the police? Organizers say it’s less crazy than it sounds,” The Chicago Reader (Aug. 25, 2016),

funded,⁸⁶ taxpayers spend \$200 million each year on local police departments through the 599 local assistance program.⁸⁷

At the local level, police budgets in many cities seem disproportionate. For example, in Richmond, when comparing by service code, the city spends nearly \$40 million a year on police patrol.⁸⁸ By contrast, it spends less than \$4 million on mental health, substance abuse, and counseling services combined, and less than \$700,000 on housing and homelessness.⁸⁹ In Charlottesville, the police department requires \$18 million a year of local money (nearly 10% of the city's operating budget).⁹⁰ By contrast, Charlottesville's Housing Programs department gets only \$2 million and the local Department of Social Services gets only \$3 million.⁹¹

By way of further background, the phrase "defund the police" stems from the larger abolitionist movement which demands the complete eradication of the criminal justice system as we know it.⁹² Abolitionists believe that reforms have historically been ineffective attempts to ensure the safety of members of the Black community.⁹³ Notable abolitionist thinkers have recently shared their thoughts on how defunding the police plays a role in their theoretical framework,⁹⁴ and many modern protesters are adopting an abolitionist approach to criminal justice.⁹⁵ While the history of this movement reflects that some voices are calling for the elimination of entire departments, that is not what we are proposing here. Still, it is important to recognize the extent to which many people believe that our criminal justice system is illegitimate and used primarily as a tool to oppress people of color.

Whether within the "defund" movement or outside of it, advocates have been calling for reducing police budgets and reallocating those dollars to better fund social services, to put American cities on par with resource allocation typical in other developed countries.⁹⁶ Cities who try this have approached this resource reallocation in different ways. Examples include general budget cuts, ending contracts for school resource officers and investing those dollars in youth programs, and eliminating certain divisions of police departments that are problematic (traffic or

⁸⁶ Our analysis found that many cities in Virginia allocate between 9 and 15% of their annual operating budget from their general funds (i.e. not from the state) to policing.

⁸⁷ See the 2020 Budget as enrolled (HB 30, Chapter 1289), line item 408; for more on the 599 program see <https://www.dcs.virginia.gov/law-enforcement/grants/state-aid-localities-police-departments-599>

⁸⁸ Richmond city budget, FY 2020, as adopted. Combining Area I and Area II as well as "Patrol" general service codes.

⁸⁹ *Id.*

⁹⁰ Charlottesville city budget, FY 2019-20, as adopted.

⁹¹ *Id.*

⁹² Intercepted Interview with Ruth Wilson Gilmore, Ruth Wilson Gilmore Makes the Case for Abolition, (June, 10, 2020), <https://theintercept.com/2020/06/10/ruth-wilson-gilmore-makes-the-case-for-abolition/>

⁹³ Mariame Kaba, Yes, We Mean Literally Abolish the Police, (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>

⁹⁴ *Id.*

⁹⁵ 8toabolition is comprised of various organizers from across the nation who created a campaign to counter the #8cantwait campaign released by Campaign Zero. (2020), <https://www.8toabolition.com/defund-the-police>

⁹⁶ *Id.* (comparing European social services budgets to those in the U.S.).

gang divisions, for example).⁹⁷ Much research supports the idea that targeted investments in certain areas can reduce crime on the front end. More specifically, moving money currently budgeted for traditional policing into more effective crisis response can improve public safety while also reducing the risk of police violence. One oft-cited successful example of this strategy is the Crisis Assistance Helping Out on the Streets, or CAHOOTs, program in Eugene, Oregon. There, about 20% of the 911 calls are responded to by the CAHOOTs team, which handles any mental health crisis calls.⁹⁸

The below recommendations reflect one interpretation of how police budget reallocation could be applied in Virginia. Our recommendations call for first, clarity on the size and use of police budgets; second, reduction of police contact by establishing alternative crisis response programs and clarifying police's role; and finally, suggestions for social services spending that can reduce crime through prevention.

RECOMMENDATIONS:

- 1. Study police budgets and research whether public funds can achieve public safety with less risk of police violence.** One of the questions researchers are starting to ask is why police budgets are so large. Police officers themselves are not particularly well-paid,⁹⁹ so where exactly is all that money going? We recommend the General Assembly or Governor appoint a commission to collect and review local police spending in Virginia to find out more. Are there ways police could be spending more wisely and effectively? Could police budgets be reallocated in ways that prevent crime in the first place?
- 2. Require each locality to establish a crisis response unit made of mental health professionals and mediators, instead of sending police officers to every emergency.** As indicated by the CAHOOTs model, providing specialized mental health services can reduce the cost of response and improve outcomes for community crises. Often emergencies to which police are called do not involve crime. Programs like these are a more empathetic, effective approach to mental health care emergencies. Such programs are also proven to be fiscally conservative, since they conserve police effort for situations for which police are trained (situations that require potentially lethal force, and making arrests).¹⁰⁰ Community crisis response units do not completely relieve police of their

⁹⁷ *Id.*

⁹⁸ <https://whitebirdclinic.org/cahoots/>; Farah Stockman & John Eligon, "Cities ask if it's time to Defund Police and Reimagine Public Safety," *The New York Times* (June 8, 2020) <https://www.nytimes.com/2020/06/05/us/defund-police-floyd-protests.html>

⁹⁹ See, e.g. Nolan Stout, "Charlottesville Police Department sees mass exodus," *The Daily Progress* (Dec. 30, 2018), https://www.dailyprogress.com/news/local/charlottesville-police-department-seeing-a-mass-exodus/article_7b6621a0-0c9c-11e9-b094-6b73c596a053.html (describing struggles retaining police officers, partly because of poor pay).

¹⁰⁰ Sigal Samuel, "Calling the cops on someone with mental illness can go terribly wrong. Here's a better idea." *Vox* (July 1, 2019), <https://www.vox.com/future-perfect/2019/7/1/20677523/mental-health-police-cahoots-oregon-oakland-sweden>.

duties, in the event that a mental health worker feels the situation is unsafe for them, however it greatly reduces the need for a traditional response. The General Assembly could establish pilot programs in several localities. Since such programs reduce the need for police, funding can be pulled from local police budgets or through DCJS grants. Note that in some cities that have established similar programs, the programs are folded in as part of the police department.

3. **Invest state dollars in crime prevention, through education, healthcare, and social services.** Social science and empirical research call for shifting our values (and budgets) to meet community needs in a more effective manner, long before police ever get involved. Reallocating resources that currently go to the police will create funding opportunities for community programs, social services, affordable housing, and other programs that we know to prevent crime on the front end.¹⁰¹ Since the state budget currently assists municipal funds for policing, jails, and social services, urging the General Assembly to better reflect effective priorities in their funding assistance could help redistribute resources.

- a. **Deeper investment in education programming and student support staff better meets student need than student resource officers (“SROs”) do.**

87% of all secondary schools in Virginia are currently assigned a full or part-time SRO. School districts nationwide first developed SRO roles in response to the Columbine shooting in 1999.¹⁰² But their presence in schools has evolved to include a much wider array of “traditional law enforcement tasks,” as well as an increased role in what has historically been in-school discipline.¹⁰³ The results from that expansion are particularly concerning in Virginia, leading the nation in criminal justice referrals by some measures, as recently as 2015.¹⁰⁴ A research team from Virginia Tech showed that some of those referrals did not involve exposure to court or jail, but they also demonstrated how an overwhelming number of those referrals impacted Black students, 49.4% of all referrals, despite constituting 23% of the student population.¹⁰⁵ The Commonwealth could reconsider its SRO program and consider reallocating these funds.

¹⁰¹ See, e.g. Beyond Containment: Reevaluating What’s important to Improve Public Safety in Richmond (Richmond Commonwealth’s Attorney, 2019), https://www.styleweekly.com/general/pdfs/RVA_DiscussionGuide_smallfile.pdf (describing root causes of crime and areas for potential investment to prevent problems in the first place).

¹⁰² “School Resource Officers in Virginia,” DCJS, <http://vcov.virginia.gov/School%20Resource%20Officers%20in%20Virginia%20DCJS.pdf>

¹⁰³ Jason Langberg & Angela Ciolfi, “Protecting Childhood: A Blueprint for Developmentally Appropriate School Policing in Virginia.” Legal Aid Justice Center Just Children. <https://www.justice4all.org/wp-content/uploads/2016/01/School-Policing-Report-Full.pdf>

¹⁰⁴ Susan Ferriss, “Virginia Tops Nation in Sending Students to Cops, Courts,” Center for Public Integrity (April 10, 2013), <https://publicintegrity.org/education/virginia-tops-nation-in-sending-students-to-cops-courts-where-does-your-state-rank/>

¹⁰⁵ Bill Foy, “Virginia Tech study provides new context on troubling school-to-prison pipeline report,” Virginia Tech Daily (May 24, 2017), <https://vtnews.vt.edu/articles/2017/05/clahs-school-to-prison-pipeline.html>

- b. **Investing in increased affordable housing, supportive housing, and eviction assistance better meets the problem of homelessness and neighborhood instability than policing does.** As a starting point, low quality housing has been found to be linked to crime and violence.¹⁰⁶ However, supportive housing, which can assist a number of people including the elderly, homeless, those suffering from substance abuse, and those previously incarcerated, has been found to lower recidivism rates by providing safe housing for those exiting the prison process. Supportive housing is also much more cost-effective than correctional facilities.¹⁰⁷ Another study found that the building of affordable housing units through the Low Income Housing Tax Credit program lowered both violent and property crime in impoverished neighborhoods.¹⁰⁸ As for homelessness, research indicates that supporting the homeless population instead of jailing or criminalizing their existence results in significant savings.¹⁰⁹ Criminalizing homeless activities does not create a safer environment but instead only temporarily removes people from the streets and leaves them with fines and court fees they are often unable to afford.¹¹⁰ Studies in Utah, Albuquerque, and Central Florida have shown that providing housing is much more cost effective than jailing or hospitalizing the homeless.¹¹¹ Investment in housing can reduce crime rates more effectively than police involvement. The state should improve its housing assistance and eviction protections.
- c. **Investing in treatment, healthcare, and diversion better meets issues of substance use than policing can, even at its best.** Substance use is a compelling policy problem to examine, in part because the narrative on how to best respond has already shifted in meaningful ways. Last session, Virginia passed a bill to decriminalize simple possession of small amounts of marijuana. Nationally, as the problem has spread, the narrative on opioids has pivoted away from arresting users and toward treating them. Medication-assisted treatment (“MAT”) is incredibly effective at its chief goal of weaning injection drug users off of heroin, but in addition, it has been shown to reduce other criminality and decrease

¹⁰⁶ Housing and Public Safety, Justice Policy Institute (Nov. 1, 2007) http://www.justicepolicy.org/images/upload/07-11_REp_HousingPublicSafety_AC-PS.pdf

¹⁰⁷ *Id.*

¹⁰⁸ Rebecca Diamond & Tim McQuade, 2019. "[Who Wants Affordable Housing in Their Backyard? An Equilibrium Analysis of Low-Income Property Development](#)," 127(3) *J. of Political Economy*, 1063-1117 (this study also found that there was no impact upon crime when affordable housing units through this program were built in higher income neighborhoods).

¹⁰⁹ As recently as 2019, a federal appeals court disallowed a Virginia law criminalizing the purchase of alcohol by homeless alcoholics as unconstitutionally vague and violating the 8th Amendment. *Manning v. Caldwell*, 930 F.3d 264 (4th Cir. 2019); https://www.washingtonpost.com/local/legal-issues/court-strikes-down-virginia-law-for-criminalizing-an-illness-in-targeting-homeless-alcoholics/2019/07/17/9ce7b53a-a7e4-11e9-a3a6-ab670962db05_story.html

¹¹⁰ National Law Center on Homelessness and Poverty, No Safe Place, https://nlchp.org/wp-content/uploads/2019/02/No_Safe_Place.pdf

¹¹¹ *Id.*

syringe sharing, which has other public health benefits.¹¹² Naloxone has also been vital in the fight against opioids, able to resuscitate an overdose victim and potentially save a life.¹¹³ And none of these functions are traditional law enforcement functions. While police or correctional officers have done some great work in expanding MAT or naloxone use in their roles, a more efficient use of public funding is to invest those same dollars in interventions like MAT and naloxone through institutions better equipped for those roles, like federally-qualified health centers, behavioral health facilities, and community centers. The state should increase its current funding to these local programs.

- d. **Investing in childcare, afterschool programs, and teen jobs programs reduces crime on the front end by keeping kids supervised and busy.** Research shows that the afterschool hours are some of the most dangerous hours for pre-teens and teens, when they are most likely to get in trouble.¹¹⁴ In multiple studies, youth jobs programs and afterschool programs are associated with significant and long-term drops in crime (from 35-60 percent).¹¹⁵ In addition, such programs improve student attendance and engagement in school, and seem to help children (particularly boys) learn new conflict resolution skills, reducing violence in the long haul.¹¹⁶ It's clear that these programs merit far more than the haphazard investment they currently get from a few localities across the Commonwealth. Given that nearly a third of crime across Virginia is committed by young people under 25,¹¹⁷ addressing the needs of youth and reducing the trouble they get into could significantly reduce the need for police response in our communities. With changes to the Children's Services Act, and more funding, the state could set up a network of prevention programs in every locality. The state should provide universal after-school care and use grants to help localities set up teen jobs programs during summer break. This investment will certainly pay back again and again.

¹¹² Jennifer Carroll, et al. Evidence-based Strategies for Preventing Opioid Overdose, Centers for Disease Control (2018) <https://www.cdc.gov/drugoverdose/pdf/pubs/2018-evidence-based-strategies.pdf>

¹¹³ *Id.*

¹¹⁴ After School Alliance Issue Brief, "Keeping Kids – and Communities—Safe" (April 2017), https://www.afterschoolalliance.org/issue_briefs/issue_CrimeIB_27.pdf ; Sara Heller et al, The Effects of Summer Jobs on Youth Violence, National Criminal Justice Reference Service Office of Justice Programs (Aug. 2017), <https://www.ncjrs.gov/pdffiles1/ojrdp/grants/251101.pdf> ; Alicia Modestino, "How can summer jobs reduce crime among youth?" Metropolitan Policy Program at Brookings (Dec. 2017), https://www.brookings.edu/wp-content/uploads/2017/12/metro_2018jan_how-can-summer-jobs-reduce-crime-among-youth-final.pdf

¹¹⁵ "The Prime Time for Juvenile Crime Needs After School," Council for a Stronger America [StrongNation] <https://strongnation.s3.amazonaws.com/documents/416/f256a70f-ede5-4d3f-8b86-8bf6b3fa384e.pdf?1525117833&inline;%20filename=%22The%20Prime%20Time%20for%20Juvenile%20Crime%20Needs%20Afterschool.pdf%22>

¹¹⁶ *Id.*

¹¹⁷ 28% of Virginia arrests are individuals 24 years old or younger. 40% of violent crimes are committed by individuals 24 or younger. 37% of drug crimes are committed by individuals 24 or younger. Note that the vast majority of those offending are young men and boys. Annual Crime in Virginia Report (2019), Virginia State Police.

CONCLUSION

As the work of the Commission has made painfully clear, Virginia spent the better part of its 400-year history systematically oppressing and discriminating against people of color. As result, our communities of color continue to suffer disparately negative outcomes across all areas of life. The injustices of our criminal justice system, highlighted most recently by the tragic death of George Floyd and the calls of recent protesters, are both symptomatic of these larger inequities and evidence of the need for a more urgent response. We respectfully submit these policy proposals, which cover a broad spectrum of possibilities for policing reform and accountability, to help the Commission develop its own set of recommendations for the Governor's consideration.

At the same time, we want to emphasize that the recommendations included in this memo, and the urgency and tragedy of this moment, should not obscure the need for even greater criminal justice and policy reforms than those specifically targeted here, reforms we know the Commission wants to continue to investigate in the weeks and months ahead.

APPENDIX

Included separately as an appendix to this document:

- A. Standardized data program requirements, modeled on the Police Data Initiative
- B. Sample racial profiling law, as suggested by the NAACP in their Police Reform Toolkit
- C. Civilian Review Board models
- D. Guidelines for developing a Use of Force Policy, as developed by the Policing Project
- E. Camden, NJ Use of Force policy

Proposed Standard Data Collection Requirements for Local Police Departments across the Commonwealth

Based on data sets developed by the **Police Data Initiative**

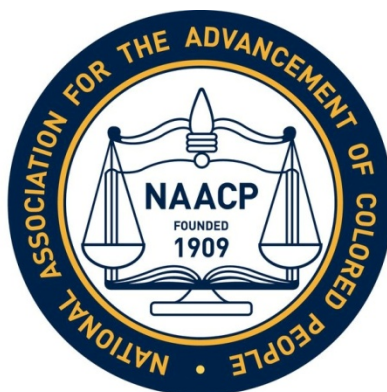
First Principles:

- a. This data is made available for the benefit of the police *and* the public.
- b. All data points must include, if relevant, demographics, geolocation data, and narrative or cause.
- c. All data must be presented in a downloadable format and open to the public.
- d. Efforts should be made to ensure that data collected is consistent, accurate, and complete.

Required data points:

1. Crime Complaints & Calls for Service
2. Pedestrian Stops & Vehicle Stops (including citations and tickets)
3. Arrests Made
4. Uses of Force
5. Officer-involved Shootings
6. Assaults on Officers
7. Civilian Complaints, including the outcomes of those complaints
8. Structural Police Department Information, including budgetary information and workforce demographics and experience

Pathways to Police Reform Community Mobilization Toolkit



NAACP Criminal Justice Department

July 2016

Sample Anti-Racial Profiling Bill From the Born Suspect Report

A Law to Prohibit Profiling/Discriminatory Policing Practices by Law Enforcement Officers.

Be it enacted by the [Name of Government Body] as follows:

Section 1. Declaration of Legislative Intent and Findings.

- (a) The [Name of Government Body] finds that profiling/discriminatory policing practices endangers the long tradition of law enforcement officers serving the [Applicable State or Locality] community in order to cultivate a welcoming place for people of all backgrounds. The [Legislative Assembly/Local Council] further finds that the people of [Applicable State or Locality] are in great debt to the hard work and dedication of police officers in their daily duties. The name and reputation of these officers should not be tarnished by the actions of those who would commit discriminatory practices.
- (b) Profiling/discriminatory policing practices by the police alienates communities from law enforcement, violates rights and freedoms, and is a danger to public safety. By passing this legislation, it is the intent of the [Name of Government Body] to prohibit profiling/discriminatory policing practices and to create a safer state/city/community for all.

Section 2. Profiling/Discriminatory Policing Practices Prohibited.

- (a) Definitions. As used in this section, the following terms have the following meanings:
 1. “Law enforcement officer” means
 - (A) a peace officer or police officer as defined in the law who is employed by the [State/Locality]; or
 - (B) a special patrol officer appointed by the police commissioner/chief to carry out law enforcement duties.
 2. “Law enforcement action” means any action carried out by law enforcement agencies and officers that involve apprehending people who break the law.
 3. “Specific suspect description-based notification” means reasonably detailed physical descriptions of the personal identifying characteristics of potential suspects (including age, sex, ethnicity or race) by law enforcement officers

instead of law enforcement officers acting based on a generalized assumption about persons of different races. Description-based notification is not a violation of the prohibition on profiling/discriminatory policing practices when it includes race, ethnic appearance, etc.

4. “Profiling/discriminatory policing practices” means any law enforcement action against an individual by a law enforcement officer that relies, to any degree, on actual or perceived race, color, ethnicity, religion, national origin, gender identity or expression, sexual orientation, immigration or citizenship status, language, disability (including HIV status), housing status, occupation, or socioeconomic status in initiating law enforcement action against an individual, rather than any law enforcement action that relies on a specific suspect description-based notification, an individual’s behavior or other trustworthy information or circumstances, relevant to the locality and timeframe, that links a person or persons to suspected unlawful activity.
5. A “pretextual” stop involves a police officer stopping a pedestrian for a violation of the [State/Locality] Penal Law or a driver of a motor vehicle for a traffic violation, minor or otherwise, to allow the officer to then investigate a separate and unrelated, suspected criminal offense.
6. “Housing status” means the character of an individual’s residence or lack thereof, whether publicly or privately owned, whether on a temporary or permanent basis, and shall include but not be limited to:
 - (A) an individual’s ownership status with regard to the individual’s residence;
 - (B) the status of having or not having a fixed residence;
 - (C) an individual’s use of publicly assisted housing;
 - (D) an individual’s use of the shelter system; and
 - (E) an individual’s actual or perceived homelessness.

(b) Prohibition.

1. Every member of the law enforcement agency (including other law enforcement officers, civilian employees, and parties contracted by the law enforcement agency) shall be prohibited from engaging in profiling/unlawful discriminatory practices as defined in Section (c)(3).

(c) Enforcement.

1. An individual subject to profiling/discriminatory policing practices or an organization whose interests are germane to the purpose of this section, may enforce this section in a civil action for any or all of the following remedies: compensatory and punitive damages; injunctive and declaratory relief; and such other relief as a court deems appropriate.

2. In an action brought under this section, relief may be obtained against:
 - (A) any governmental body that employed any law enforcement officer who engaged in profiling/unlawful discriminatory policing practices;
 - (B) any law enforcement officer who engaged in profiling/unlawful discriminatory policing practices and any person with supervisory authority over such law enforcement officer;
 - (C) any civilian employee who is employed with a law enforcement agency who engaged in profiling/unlawful discriminatory policing practices and any person with supervisory authority over such law such civilian employee; and
 - (D) any party contracted by the law enforcement agency who engaged in profiling/unlawful discriminatory policing practices.

3. An unlawful discriminatory practice is established under this section when:
 - (A) an individual or organization brings an action demonstrating that a law enforcement officer has, or law enforcement officers have, intentionally engaged in unlawful profiling of one or more individuals; and
 - (B) the governmental body, law enforcement officer, or supervisor against whom such action is brought fails to prove that:
 - i. such profiling or discriminatory policing practice is necessary to achieve a compelling governmental interest, and
 - ii. the practice was narrowly tailored to achieve that compelling governmental interest, and
 - iii. the least restrictive means were used to achieve the compelling governmental interest; or
 - (C) an individual or organization brings an action demonstrating that the activities of law enforcement officers have had a disparate impact on individuals based on actual or perceived race, color, ethnicity, religion, national origin, age, sex, gender identity or expression, sexual orientation, immigration or citizenship status, language, disability (including HIV status), housing status, occupation, or socioeconomic status; and
 - (D) the governmental body, law enforcement officer, or supervisor against whom such action is brought fails to prove a substantial justification for such activities; or
 - (E) the governmental body, law enforcement officer, or supervisor does prove a substantial justification for such activities; and
 - (F) the individual or organization demonstrates a comparably effective alternative policy or practice which results in less of a disparate impact.

4. In any action or proceeding to enforce this section against any governmental body, the court shall allow a prevailing plaintiff reasonable attorney's fees as part of the costs, and may include expert fees as part of the attorney's fees.

Section 3. Data Collection.

- (a) Not later than 6 months after the date of enactment of this Act, the [Applicable State/Locality] Attorney General/district attorney, in consultation with stakeholders, including Federal, State, and local law enforcement agencies and community, professional, research, and civil rights organizations, shall issue regulations for the collection of data. The [Applicable State/Locality] Attorney General's/district attorney's office shall collect this data. The regulations issued under this section shall:
 1. Provide for the collection of data on all routine or spontaneous investigatory activities.
- (b) The information to be collected shall include:
 1. Pedestrian and vehicular stops;
 2. The identifying characteristics of the operator stopped, including perceived race, ethnicity, English language proficiency, gender, and age;
 3. The location and duration of the stop;
 4. The traffic violation or violations alleged to have been committed that led to the stop;
 5. Whether or not a warning or citation was issued as a result of the stop and if so, the specific violation, if any, charged or warning given;
 6. Whether a search was performed as a result of the stop;
 7. If a search was performed, whether the person consented to the search, the probable cause or reasonable suspicion for the search, whether the person was searched, whether the person's property was searched and the duration of the search;
 8. If a search was of a passenger in the motor vehicle, the perceived age, gender, race, ethnicity, and English language proficiency of the passenger;

9. Whether any contraband was discovered or seized in the course of the search, including money, and the type of any contraband discovered or seized;
 10. Whether any physical force was used by and against the law enforcement officer or officers, and if so, to what extent; and
 11. Whether the search involved canine units or advanced technology; and any additional information which the law-enforcement agency considers appropriate.
- (c) Provide that law enforcement agencies shall compile data on the standardized form and submit the form to the [Applicable State/Locality] Attorney General's/district attorney's office;
 - (d) Provide that law enforcement agencies shall conspicuously publicize the compiled data on the respective law enforcement agency's website on a monthly or quarterly basis;
 - (e) Provide that law enforcement agencies shall maintain all data collected under this Act for not less than 4 years;
 - (f) Include guidelines for setting comparative benchmarks, consistent with best practices, against which collected data shall be measured; and
 - (g) Provide for the protection of the privacy of individuals whose data is collected by:
 1. not providing individual names and identifying information regarding the particular law enforcement officers who made the stops and the pedestrians and drivers who were stopped;
 2. limiting the use and disclosure of the data collected under this Act to the purposes set forth in this Act;
 3. except as otherwise provided in this Act, limiting access to the data collected under this Act to those Federal, State, local, or tribal employees or agents who require such access in order to fulfill the purposes for the data set forth in this Act;
 4. requiring contractors or other non-governmental agents who are permitted access to the data collected under this Act to sign use agreements incorporating the use and disclosure restrictions set forth in subparagraph 1; and
 5. requiring contractors or other non-governmental agents who are permitted access to the data collected under this Act to sign use agreements requiring the maintenance of adequate security measures to prevent unauthorized access to the data collected under this Act.

Section 4. Data Analysis.

(a) The [Applicable State/Locality] Attorney General/district attorney may collect reports from individual law enforcement officers regarding pedestrian and traffic stops made by other law enforcement officers.

1. Any such report may be submitted anonymously, and must be kept confidential.

(b) On or before [Designated Date], the [Applicable State/Locality] Attorney General/district attorney shall compile the results of the information collected pursuant to Section 3 of this Act and provide the compiled data to independent experts to be analyzed.

(c) The independent experts shall then provide the data analysis to the [State/Locality] Attorney General/district attorney office in statistical form.

(d) The [State/Locality] Attorney General/district attorney office shall report the data analysis in statistical form to the public conspicuously on the respective law enforcement agency's website on a monthly or quarterly basis without revealing personally identifiable information.

Section 5. Independent Commission.

(a) An independent [State/Locality] Commission (The Commission) shall be created to establish procedures for filing profiling/unlawful discriminatory policing practices complaints.

(b) The [State/Locality] Commission shall promulgate rules establishing procedures for filing a profiling/unlawful discriminatory policing practices complaint with the [State/Locality] Commission. The [State/Locality] Commission, in consultation with the Secretary of State's office, shall promulgate forms for complaints of profiling/unlawful discriminatory policing practices.

(c) A notice must be given to the person stopped by a law enforcement officer as to allow he or she to file a complaint with the [State/Locality] Commission if that person believes that he or she was stopped, detained, or subject to a search in violation of Section 1 of this Act.

(d) The [Applicable State/Locality] Commission shall then review and investigate the complaint.

1. The [Applicable State/Locality] Commission shall possess independent subpoena and disciplinary authority in order to investigate complaints of profiling/discriminatory policing practices.

- (e) Upon completion of the investigation, the [State/Locality] Commission shall determine if the stop or arrest was in violation of Section 1 of this Act.
- (f) If the stop or arrest was in violation of Section 1 of this Act, then the [State/Locality] Commission shall assess disciplinary measures on the law enforcement officer or officers involved in the complaint.
 - 1. Disciplinary measures assessed by the [Applicable State/Locality] Commission are enforceable in court.
- (g) The [State/Locality] Commission shall forward copies of the complaint, materials related to the investigation, and the determination with the assessed disciplinary measures to the arresting law enforcement officer's employer and the [Applicable State/Locality] Attorney General's or district attorney's office for review.
- (h) The [State/Locality] Commission shall then communicate the results of the investigation in writing to the person who filed the complaint.
 - 1. The person who filed the complaint can use the results of the investigation to file a civil claim against the involved officer/s and the employing law enforcement agency in the [Applicable State/Locality] Court for civil liability remedies. [As stated in Sections 2(c)1, 2(c)2, and 2(c)4].
- (i) The [State/Locality] Commission shall compile an annual report of all complaints received and investigated for profiling/unlawful discriminatory policing practices and submit the report on or before January 31 of each year to the Governor or the executive equivalent of a locality, the President Pro Tempore of the [State] Senate, and the Speaker of the [State] House of Representatives or the [State/Locality] legislative equivalent.
- (j) The Commission shall consist of members within the following ranks:
 - 1. A representative from the Governor's Office.
 - 2. Representatives from Advocacy Groups that support communities of color, the LGBTQ community, undocumented people, women, the Islamic community, homeless people, and people with disabilities.
 - 3. A representative of the Police Officers Association of [State/Locality].
 - 4. A representative of the applicable labor union.
 - 5. A representative of the [State] Bar Association appointed by the Governor from a list of attorneys submitted by the executive council of the [State] Bar Association.

Section 6. Training.

- (a) This Act shall require that all law enforcement agencies be trained on issues related to the prohibition on profiling/unlawful discriminatory policing practices and on data collection and reporting methods.
- (b) The [State/Locality] Commission on Peace Officers Standards and Training (CPOST) or its equivalent shall develop and disseminate guidelines and training for all law enforcement officers.
 - 1. All law enforcement officers must adhere to the standards approved by the [Applicable State/Locality] CPOST or its equivalent on the racial and cultural differences among the persons within [Applicable State/Locality].
 - 2. The course or courses of instruction and the guidelines must stress understanding and respect for diverse communities and development of effective, non-combative methods of carrying out law enforcement duties in a diverse environment.
- (c) The course of basic training for law enforcement officers must include adequate instruction on diverse communities in order to foster mutual respect and cooperation between law enforcement and members of all diverse communities.
 - 1. In developing the training, the [State/Locality] CPOST or its equivalent shall consult with appropriate groups and individuals having an interest and expertise in the field of cultural awareness and diversity.
- (d) Every law enforcement officer in the [State/Locality] must participate in expanded training as prescribed and certified by the [State/Locality] CPOST or its equivalent.
- (e) The curriculum shall utilize the Tools for Tolerance for Law Enforcement Professionals framework or its equivalent and shall include and examine the patterns, practices, and protocols that make up racial and other forms of profiling and unlawful discriminatory policing:
 - 1. This training shall prescribe patterns, practices, and protocols that prevent unlawful profiling.
 - 2. In developing the training, the [State or Locality] CPOST or its equivalent shall consult with appropriate groups and individuals having an interest and expertise in the field of racial profiling.

3. The course of instruction must include, but not be limited to, adequate consideration of each of the following subjects:
 - (A) identification of key indices and perspectives that make up differences among residents in a local community;
 - (B) negative impact of biases, prejudices, and stereotyping on effective law enforcement, including examination of how historical perceptions of discriminatory enforcement practices have harmed police/community relations;
 - (C) the history and the role of the civil rights movement and struggles and their impact on law enforcement;
 - (D) specific obligations of officers in preventing, reporting, and responding to discriminatory or biased practices by fellow officers; and
 - (E) perspectives of diverse, local constituency groups and experts on particular cultural and police-community relations issues in a local area.

- (f) Once the initial basic training is completed, each law enforcement officer in [State/Locality], who adheres to the standards approved by the [State/Locality] CPOST or its equivalent shall be required to complete a refresher course every five years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing demographic trends.

Section 7. In-Car And Body-Worn Camera Program.

- (a) Each law enforcement agency in this state may utilize federal funds from community-oriented policing services grants or any other federal source to equip each vehicle used for traffic stops with a video camera and voice-activated microphone.

- (b) [Applicable State/Local] Law Enforcement Agency must:
 1. Implement a course of instruction, which incorporates pertinent laws, Federal Rules of Evidence, departmental policies and procedures, and use and operation of the audio and video equipment;

 2. Implement an introductory in-car and body-worn camera course designed specifically for new recruits; and

 3. Implement a refresher course for advanced officer training:
 - (A) Minor infractions (not criminal in nature) by law enforcement officers discovered during routine review of the recorded material should be viewed as training opportunities and not as routine disciplinary actions.

- (B) Should the behavior or action be repetitive after being informally addressed the appropriate disciplinary or corrective action shall be pursued.
- (C) Major infractions (criminal in nature) by law enforcement officers discovered during routine review of the recorded material is subject routine disciplinary actions and criminal charges.
- (c) A chief law enforcement officer shall provide a copy of a videotape or disk that recorded a traffic stop to the driver of the stopped vehicle upon the driver's request if the tape or disk has not yet been discarded.
- (d) On the commencement of an investigation by a law enforcement agency of an unlawful discriminatory profiling complaint in which a video or audio recording of the occurrence on which the complaint is based was made, the agency shall promptly provide a copy of the recording to the law enforcement officer who is the subject of the complaint on written request by the officer.
- (e) The police chief of the involved law enforcement officer's law enforcement agency, the Commission (as described in Section 5), and the [State/Locality] Attorney General or district attorney are the only parties authorized to access the retained video and audio.
- (f) A video camera installed pursuant to a grant under this section must:
1. be automatically activated during every traffic stop;
 2. contain an audio feature; and
 3. be designed and installed so as to record the stop in its entirety.
- (g) Cameras must not be equipped with manual shutoff switches and must be activated for the entirety of a traffic stop.
- (h) Chief law enforcement officers of agencies receiving grants under this section for video cameras in police vehicles shall ensure that the videotape or disk from the camera be stored for a minimum of 90 days after use:
1. Tapes and disks must be stored and maintained under this subdivision in an accessible manner.
 2. The tapes and disks must be clearly labelled and ordered.
- (i) If the chief law enforcement officer has not been instructed by the Commission or the [Applicable State/Locality] Attorney General or district attorney to maintain the tape or disk beyond 90 days, the chief law enforcement officer may discard it.

(j) Recording applies to:

1. uniformed officers;
2. marked vehicles;
3. SWAT raids; and
4. similar planned uses of force when they involve non- uniformed officers.

(k) Officers are required, wherever practicable, to notify people that they are being recorded such as officers wearing an easily visible pin or sticker saying ‘lapel camera in operation’ or words to that effect.

Section 8. Severability.

(a) If any provision of this bill or any other provision of this law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate any portion of or the remainder of this law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

Section 9. Enactment.

(a) This law shall take effect (90) ninety days after it is enacted.

Guidelines for Selecting CCRB Models

Types of Civilian Review Board Models:

In terms of the primary models currently in use, there are [three main types](#) of CCRBs that possess overlapping functions, at least at points:

- **Investigator-focused models** enlist non-police civilian investigators to look into complaints against officers. These agencies tend to have individuals with specialized training.
- **Review-focused models** oversee internal affairs investigations and make recommendations about operations to police. These review boards tend to be staffed by volunteers and community members – an approach that can make the board seem more responsive to the community.
- **Auditing model** agencies fall in between the first two models and focus attention on broad patterns of officer misconduct rather than individual incidents.

Factors for Effectiveness:

- (1) independence from law enforcement, which is a pre-requisite to ensuring unbiased reviews;
- (2) the authority to discipline officers or provide recommendations to department officials that will result in actual discipline;
- (3) a sufficient level of funding and staffing to effectively carry-out oversight, investigatory, and enforcement duties.

Additional information on the Investigatory Model:

According to [recent research](#), the most effective model to accomplish these three aims would be **investigatory models**. Further, [recent research](#) provides a particularly helpful understanding of the investigatory model's more comprehensive and collaborative approach:

Once the civilian review board's professional staff completes its thorough investigation and the board substantiates an allegation of misconduct, the board's findings of fact will be binding on the head of the police department, who will then determine discipline based on those facts and guided by a pre-negotiated disciplinary matrix. Such a matrix will determine the range of discipline options for misbehavior and will ensure that discipline will always take place. The head of the police department makes the final decision on discipline but is bound by the independent factual investigation of the civilian review board and the range of punishment included in the pre-negotiated disciplinary matrix. This formula not only ensures discipline when the CCRB finds that wrongdoing has occurred, but it also creates transparency and predictability in the process, allowing the public to know ahead of time what type of discipline will be faced. Narrow exceptions can be made for when the head of the police department may depart from the factual findings of the review board, but such exceptions must be carefully drawn and should only capture those situations where an obvious error had been made in the board's factual investigation.

CASE STUDY: Building off the latter point regarding exceptions, Newark officials created an exception for when a "clear error" was made in their CCRB's factual investigation. They defined such a "clear error" as: "when the CCRB findings of fact are based upon obvious and indisputable errors and cannot be supported by any reasonably

interpretation of the evidence.” Ultimately, by establishing CCRBs in such a way, officials in Newark accomplish the following: (1) mutual collaboration and agreement to the terms of any given rule adopted by both CCRB and PD officials; and (2) public notice of these rules, which leads to a broad understanding of how sanctions are imposed substantively and procedurally. Taken together, this collaborative structure allows for greater transparency, which can lead to a better understanding of the inner-workings of one’s local justice system, and – as is often the case – such transparency and understanding can result in higher rates of accountability.

CCRB MEMBERSHIP & STAFFING:

To ensure full independence of a board and its legitimacy in the eyes of a community, [recent research](#) has suggested that most boards should be nominated by civic organizations that have an interest in the safety, well-being, and civil rights of their community. Alternatively, a minority share of board nominees should be left to a city’s mayor and lawmakers. Nominees should possess a demonstrated track record of the well-being (broadly defined) of their city, a strong understanding of the importance of protecting a person’s civil rights and liberties during police interactions, and board members should possess expertise in relevant fields in order to be appoints (e.g. law, civil rights, social work, behavioral health, etc.).

CASE STUDY: In Newark, the newly established civilian review board will be composed of eleven members, seven of whom will be nominated by civil rights, immigrants’ rights, and community-based organizations. The nominees are presented to the mayor, who then appoints the board members subject to the advice and consent of the Municipal Council. The following organizations and entities have nominating authority: ACLU of New Jersey; NAACP of New Jersey, People’s Organization for Progress; La Casa de Don Pedro; Ironbound Community Corporation; Newark Anti-Violence Coalition; and a representative of the clergy community. The mayor is obligated to appoint Newark’s Inspector General to the board, and the Municipal Council nominates three members to the board.

Comparable Virginia boards serving other functions:

- **Fairfax County:** When Fairfax County [established their civil review panel](#) in 2016, their Board of Supervisors established it to only hear complaints of police misconduct or abuse of authority; the board was not investigatory and had no subpoena power. Instead, the panel was only authorized to review police personnel files which had already gone through the review/investigative process by a police department’s internal affairs unit. If the board found that the unit’s initial investigation of an officer was insufficient in some way, the panel would send particular files back to police to address. This type of model seems to fall into **review-focused board**. Its lack of enforcement power and independence may result in ineffectiveness.
- **Virginia Beach:** “The purpose of the Investigation Review Panel is to ensure that reports and conclusions of the Police Department’s Internal Affairs Office investigations involving abuse of authority or other serious misconduct are complete, accurate, and factually supported.” Like the CCRB in Fairfax County, this model seems aligned with the **review-focused board**.
- **Charlottesville:** Charlottesville’s board is comparable to the other two in that its function is **review-focused**.

Other helpful articles that outline calls for CCRB creation by local officials and the public:
(Richmond) *Mayor Stoney Commits to Enacting Crisis Alert, Independent Citizen Review Board, June 3, 2020*, <https://www.wtvr.com/news/local-news/mayor-stoney-commits-to-enacting-crisis-alert-independent-citizen-review-board>.

(Richmond) *Consensus Forms In City Council Around Civilian Review Board, Mental Health Alerts, June 2, 2020*, <https://vpm.org/news/articles/13936/consensus-forms-in-city-council-around-civilian-review-board-mental-health>.

(Loudoun County) *Congresswoman Supports Civilian Review of Police Force Complaints in Loudoun County, June 5, 2020*, <https://www.newsbreak.com/virginia/ashburn/news/0PFUM9yv/congresswoman-supports-civilian-review-of-police-force-complaints-in-loudoun-county>.

USE-OF-FORCE POLICY GUIDELINES

The following checklist, developed by the Policing Project at New York University School of Law, outlines best practices on use of deadly force. Prosecutors can encourage their local police department to incorporate these best practices in their training and policy, and prosecutors can consider these questions when determining reasonableness in officer-involved critical incidents.

The Policing Project is dedicated to strengthening the relationship between police and the communities they serve by developing best practices for policing agencies, promoting transparency around policing policies and practices, facilitating community involvement in setting policing policies and priorities, and promoting data collection and cost-benefit analysis of policing.

USE OF FORCE PRINCIPLES, GENERALLY

1. Do the Department's policies emphasize necessity, de-escalation, and proportionality when using force?
2. Do the Department's policies require that each of an officer's decisions leading up to a use of force be reasonable (not just the specific use of force at the particular moment that it was applied)?
3. Do the Department's policies require that officers consider a person's specific characteristics, such as mental capacity, developmental disability, the influences of drugs or alcohol, and/or language barriers, when determining whether force is appropriate?
4. Do the Department's policies prohibit use of force to subdue a subject(s) who is not suspected of any criminal conduct, unless necessary to protect an officer's or another person's safety?
5. Do the Department's policies prohibit use of force as retaliation?
6. Do the Department's policies prohibit use of force against a person who only verbally confront officers and is not involved in criminal conduct?
7. Do the Department's policies prohibit use of force against a person who is handcuffed or otherwise restrained (because that person does not present a threat)?
8. Do the Department's policies impose a duty to intervene on officers during improper force?
9. Do the Department's policies require officers to promptly render aid to injured subjects?
10. Does the Department's policy require all uses of deadly force, whether intentional or unintentional, to be immediately reported and investigated?

FIREARMS SPECIFIC POLICIES

1. Do the Department's policies consider each firearm discharge as a separate use of force that must be specifically justified?
2. Do the Department's policies require officers to give a verbal warning and identify themselves as police officers before discharging a firearm, when possible?
3. Do the Department's policies prohibit officers from firing warning shots?
4. Do the Department's policies prohibit officers from shooting at or from moving vehicles?
5. Do the Department's policies consider pointing a firearm at a person to be a use of force?
6. Do the Department's policies prohibit shooting through a door, window, or in other circumstances in which the target is not clearly in view?

POLICIES FOR NON-FIREARMS USES OF FORCE

1. Do the Department's policies prohibit maneuvers that may cut off blood or oxygen to a subject's head (e.g., choke holds, strangleholds) except when lethal force is allowed?
2. Do the Department's policies prohibit techniques and modes of transport that run a substantial risk of positional asphyxia (e.g., putting a person prone on the ground while restrained)?
3. Do the Department's ECW (Taser) policies prohibit use against certain "high risk populations," including those who are pregnant, infirm, elderly, or small in size?
4. Do the Department's policies limit intentional weapon strikes (such as with a baton) to the head to only those situations when lethal force is permitted?

Appendix E


CAMDEN COUNTY POLICE DEPARTMENT			
VOLUME: 3	CHAPTER: 2	# OF PAGES: 18	
SUBJECT: USE OF FORCE			
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SUPERSEDES ORDER: NEW			

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PURPOSE

1. The primary purpose of this directive is to ensure officers respect the sanctity of life when making decisions regarding use of force. Sworn law enforcement officers have been granted the extraordinary authority to use force when necessary to accomplish lawful ends. That authority is grounded in the responsibility of officers to comply with the laws of the State of New Jersey regarding the use of force and to comply with the provisions of this directive. Equally important is law enforcement's obligation to prepare individual officers in the best way possible to exercise that authority.

In situations where law enforcement officers are justified in using force, the utmost restraint should be exercised. Use of force should never be considered routine. In exercising this authority, officers must respect the sanctity of all human life, act in all possible respects to preserve human life, do everything possible to avoid unnecessary uses of force, and minimize the force that is used, while still protecting themselves and the public.

POLICY

2. This directive applies to all officer uses of force. This directive establishes guidelines for officers with regard to use of force. This directive applies to all uses of force, whether officers are on- or off-duty. This directive complements the Critical Decision-Making model (CDM) that is the core of the Department's use of force training. CDM provides officers with an organized way of making decisions about how they shall act in any situation, including situations that may involve potential uses of force.

3. This directive recognizes constitutional principles, but aspires to go beyond them. The Fourth Amendment requires that an officer's use of force be "objectively reasonable." *Graham v. Connor*, 490 U.S. 386 (1989). Under this standard, an officer may only use force that a reasonable officer would when facing similar circumstances. The objectively reasonable standard acknowledges the difficult decisions that officers are forced to make under rapidly evolving and often unpredictable circumstances, but it does not provide specific guidance on what to do in any given situation.

The Constitution provides a "floor" for government action. This Department aspires to go beyond *Graham* and its minimum requirements. Sound judgment and the appropriate exercise of discretion will always be the foundation of police officer decision making in the broad range of possible use of force situations. It is not possible to entirely replace judgment and discretion with detailed policy provisions. Nonetheless, this directive is intended to ensure that de-escalation techniques are used whenever feasible, that force is only used when necessary, and that the amount of force used is proportionate to the situation that an officer encounters.

The Department's core use of force principles are as follows:

CORE PRINCIPLE #1: Officers may use force only to accomplish specific law enforcement objectives.

CORE PRINCIPLE #2: Whenever feasible, officers should attempt to de-escalate confrontations with the goal of resolving encounters without force. Officers may only use force that is objectively reasonable, necessary, and as a last resort.

CORE PRINCIPLE #3: Officers must use only the amount of force that is proportionate to the circumstances.

CORE PRINCIPLE #4: Deadly force is only authorized as a last resort and only in strict accordance with this directive.

CORE PRINCIPLE #5: Officers must promptly provide or request medical aid.

CORE PRINCIPLE #6: Employees have a duty to stop and report uses of force that violate any applicable law and/or this directive.

4. Officers will be disciplined for violations of this directive. This directive is not intended to create or impose any legal obligations or bases for legal liability absent an expression of such intent by a legislative body, court, or agency. Nevertheless, officers have an affirmative, individual duty to ensure compliance with this directive and with applicable state and federal laws. This applies to the officer's own conduct, as well as observation or knowledge of the conduct by other employees. This directive reinforces the responsibility of officers to take those steps possible to prevent or stop illegal or inappropriate uses of force by other officers. Actions inconsistent with this directive may result in disciplinary action, up to and including termination. At the same time, officers whose actions are consistent with the law and the provisions of this directive will be strongly supported in any subsequent review of their conduct regarding the use of force.

PROCEDURES

CORE PRINCIPLE #1: Officers may use force only to accomplish specific law enforcement objectives.

5. Officers *may* use force for the following legitimate law enforcement objectives:

- a. To effect lawful law enforcement objectives, such as to effect a lawful seizure (an arrest or detention) or to carry out a lawful search;
- b. To overcome resistance directed at the officer or others;
- c. To prevent physical harm to the officer or to another person, including intervening in a suicide or other attempt to self-inflict injury;
- d. To protect the officer, or a third party, from unlawful force; or
- e. To prevent property damage or loss.

6. Officers *may not* use or threaten to use force for the following reasons:

- a. To resolve a situation more quickly, unless the extended delay would risk the safety of the person involved, officers, or others, or would significantly interfere with other legitimate law enforcement objectives;
- b. To punish a person or to retaliate against them for past conduct or to impose punishment;
- c. To prevent a person from resisting or fleeing in the future;
- d. To force compliance with an officer's request, unless that request is necessary to serve officer or public safety, or criminal adjudication; or
- e. Based on bias against a person's race, ethnicity, nationality, religion, disability, gender, gender identity, sexual orientation, or any other protected characteristic.

CORE PRINCIPLE #2: Whenever feasible, officers should attempt to de-escalate confrontations with the goal of resolving encounters without force. Officers may only use force that is objectively reasonable, necessary, and as a last resort.

7. Officers will use de-escalation and force-mitigation tactics and techniques whenever safe and feasible to do so. It should be every officer's goal to resolve all situations without using force. To make this more likely, officers must use de-escalation and force-mitigation tactics and techniques whenever doing so will not put the officer or another person at undue risk.

- a. Officers will receive substantial training on the Critical Decision-Making (CDM) model, as well as when and how to appropriately use de-escalation and force-mitigation, including but not limited to *Tactical Communication*, *Tactical Positioning*, and *Time as a Tactic*.

8. Officers will provide clear instructions and warnings whenever feasible before using force. Whenever safe and feasible, officers should not use force immediately when encountering noncompliance with lawful verbal directions. Instead, whenever safe and feasible, before using force, officers should:

- a. Provide clear instructions and warnings;
- b. Seek to communicate in non-verbal ways when a verbal warning would be inadequate (such as when the person does not speak English, or is unable to hear or understand warnings);

- c. Indicate the consequences of refusing to comply with a mandatory order, including that force will be used unless the person complies; and
- d. Give the person a reasonable amount of time to comply.

9. Officers must consider an individual's mental, physical, or other incapacities. Officers must, when feasible, consider whether a person's failure to comply with an officer's command is due to a medical condition, mental impairment, physical limitation, developmental disability, language barrier, drug interaction, behavioral crisis, or other factors beyond the individual's control. In these situations, officers should consider whether specific techniques or resources would help resolve the situation without force.

10. Officers should not exercise force unless it is necessary and as a last resort. Officers should exhaust all other reasonable means before resorting to the use of force. Using force only as a last resort means that officers not engage in unnecessary, overly aggressive, or otherwise improper actions that create a situation where force becomes needed. Using force only as a last resort also means that an officer shall not use force if a safe alternative would achieve the law enforcement objective.

CORE PRINCIPLE #3: Officers must use only the amount of force that is proportionate to the circumstances.

11. Officers must evaluate all the circumstances facing them in the field to determine whether force is appropriate and what amount is proportionate. Officers encounter a wide range of situations in the field, but the sanctity of human life should be at the heart of every decision an officer makes. When force cannot be avoided through de-escalation or other techniques, officers must use no more force than is proportionate to the circumstances. In general, the greater the threat and the more likely that the threat will result in injury or death, the greater the level of force that may be immediately necessary to overcome it. Consistent with training, some of the factors that officers should consider when determining how much force to use include:

- a. The risk of harm presented by the person;
- b. The risk of harm to the officer or innocent citizens by using force;
- c. The seriousness of the law enforcement objective;
- d. Whether further de-escalation techniques are feasible, including the time available to an officer to make a decision, and whether additional time could be gained through tactical means;
- e. If there is a practical, less harmful alternative available to the officer;
- f. Mental or physical disability, medical condition, and other physical and mental characteristics; and
- g. Whether there are other exigent/emergency circumstances.

12. As a situation changes, officers must reevaluate the circumstances and continue to respond proportionately. Over the course of an encounter, the circumstances and threats an officer faces may change. Consistent with training and the CDM process, while using force, officers must continually assess the effectiveness, proportionality, and necessity of their actions.

13. This Department trains officers on the following range of force options. The force options available to an officer fall along a continuum. Officers are not required to exhaust one type of force before moving to a greater force. Sound judgment and the appropriate exercise of discretion will always be the foundation of officer decision making in the broad range of possible use of force situations. This Department trains its officers on the following force options, from least to greatest force:

- a. Police Presence (*least*)
- b. Verbal Control Techniques
- c. Physical Contact
- d. Holding Techniques
- e. Compliance Techniques
- f. Control Instruments
- g. Physical Force
- h. Impact Weapons
- i. Canine Apprehension
- j. Conducted Energy Devices
- k. Deadly Force (*greatest*)

14. The level of resistance that an officer encounters is a key factor in determining the proportionate amount of force. It is not possible to determine ahead of time what the proportionate level of force is for every possible situation that officers may face. Nevertheless, one of the key factors in determining what level of force is necessary and proportionate in a given situation is the level of resistance that an officer encounters. In general, the less resistance an officer faces, the less force the officer should use. The types of resistance officers may encounter fall along a continuum, from a cooperative person to an active assailant. Consistent with training, the following general rules apply when officers are exercising judgment in determining what level of force is necessary and proportionate:

- a. **Cooperative Person:** When dealing with a cooperative person, officers may rely on police presence and/or verbal control techniques, but should not use greater force.
- b. **Passive Resistor:** When dealing with a passive resistor, officers may rely on police presence, verbal control techniques, holding techniques, compliance techniques, and/or control instruments, but greater force, such as physical force, impact weapons (batons), and Conducted Energy Devices (CEDs), should not be used.
- c. **Active Resistor:** In general, when dealing with an active resistor, in addition to the options available for passive resistors, properly trained personnel may use canine apprehension if the canine handler has probable cause to believe that the person has committed a crime, and less intrusive means of apprehension have been exhausted or under the circumstances would be unavailable or ineffective. Further guidance may be found in Department directive CCV4C5.
- d. **Threatening Assailant:** In general, when dealing with a threatening assailant, officers have all use of force options, other than deadly force, available to them, including impact weapons (such as batons or less lethal ammunition) and CEDs. Although a range of force options are generally available, particular options can be used only if proportional to the threat faced. For example:
 - CEDs and less lethal ammunition may be discharged only in response to resistance that poses a substantial risk of serious physical injury.

- e. **Active Assailant:** In general, when dealing with an active assailant, officers have all force options available, though deadly force should only be used as a last resort and in strict accordance with the guidance below, *see* Core Principle #4.
- 15. When an individual engages in certain aggressive actions, he/she is considered an assailant, not a resistor.** When a person uses force, threatens to use force, or otherwise acts in an aggressive manner that increases the likelihood that they may cause physical injury to an officer or to another person, that person is no longer considered cooperative or even a resistor, but instead becomes an assailant. Flight from an officer does not, on its own, qualify a person as an assailant (*see* Section 24 below for more information).
- 16. When an individual's actions pose an imminent danger, he/she is considered an active assailant, not a threatening assailant.** The difference between a threatening assailant and an active assailant is how immediate a threat the assailant poses to the officer or another person. When the person poses an *imminent danger*, the person is considered an active assailant. When the threat exists but does not amount to imminent danger, the person is considered a threatening assailant.
- 17. Special requirements must be met before an officer may display a firearm.** Unholstering or pointing a firearm are tactics that should be used with great caution. The presence of an officer's firearm, under the right circumstances, can discourage resistance and ensure officer safety in potentially dangerous situations without the need to resort to actual force. At the same time, however, unnecessarily or prematurely drawing a firearm can limit an officer's options in controlling a situation, will create great anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Accordingly, officers should only display their firearms in appropriate tactical situations and using the following principles as guidance:
- a. **Pointing a firearm.** Consistent with training, officers may point a firearm at a person only when circumstances create a reasonable belief that it may be immediately necessary for the officer to use deadly force. When the officer no longer reasonably believes that deadly force may be immediately necessary, the officer shall, as soon as practicable, secure or holster the firearm.
 - b. **Unholstering a firearm.** Consistent with training, officers may unholster or otherwise display a firearm only when circumstances create a reasonable belief: (1) that the officer is permitted to point a firearm at a person, *or* (2) that unholstering or displaying the firearm may itself help establish or maintain control in a potentially dangerous situation.
- 18. Persons under an officer's control should be positioned in a way so that their breathing is not obstructed.** After gaining control of a person, officers should position the person in a manner to allow the person to breath unobstructed. This means that officers should not sit, kneel, or stand on a person's chest or back, and whenever feasible should not force the person to lie on his or her stomach.
- 19. In addition to this directive, specific weapons directives remain applicable.** In addition to the requirements of this directive, officers may only use weapons in a manner consistent with specific Departmental weapons policies, such as directive CCV3C3 (Weapons & Ammunition), directive CCV4C3 (Conducted Energy Devices – Tasers), and other relevant directives.

CORE PRINCIPLE #4: Deadly force is only authorized as a last resort and only in strict accordance with this directive.

20. Deadly force includes, but is not limited to, use of a firearm. Deadly force is force that an officer knows or should know creates a substantial risk of causing death or serious bodily harm. Deadly force includes, but is not limited to, firing a firearm in the direction of another person. Depending on the circumstances, deadly force also includes other potentially lethal tactics, such as:

- a. Firing of a firearm at a vehicle, building, or structure in which another person is believed to be; or
- b. Applying a chokehold or similar technique.

21. Threatening deadly force does not necessarily constitute deadly force. A threat to cause death or serious bodily harm, such as by displaying a firearm, does not constitute deadly force, so long as the officer's purpose is limited to creating an apprehension that deadly force will be used if necessary.

22. Strict requirements must be met before an officer may use deadly force. As discussed above, when feasible, officers should try to de-escalate situations, issue verbal warnings, or use non-lethal force with the goal of resolving encounters without using deadly force. There are, however, occasions when deadly force is necessary to protect officers or members of the public. An officer may use deadly force only when the officer reasonably believes such action is immediately necessary to protect the officer or another person from imminent danger of death or serious bodily harm.

- a. If feasible, an officer should identify himself/herself and state his/her intention to shoot before using a firearm.
- b. Officers shall not use deadly force if the officer reasonably believes that an alternative will avert or eliminate an imminent danger of death or serious bodily harm, and achieve the law enforcement purpose at no increased risk to the officer or another person.

23. Strict additional requirements must be met before an officer may use deadly force against a moving vehicle. While any firearm discharge entails some risk, discharging a firearm at or from a moving vehicle entails an even greater risk to innocent persons and passengers because of the risk that the fleeing suspect may lose control of the vehicle. Due to this greater risk, and considering that firearms are not generally effective in bringing moving vehicles to a rapid halt, an officer shall not fire from a moving vehicle, or at the driver or occupant of a moving vehicle, unless the officer reasonably believes:

- a. There exists an imminent danger of death or serious bodily harm to the officer or another person; *and*
- b. No other means are available at that time to avert or eliminate the danger.

24. Strict additional requirements must be met before an officer may use deadly force against a fleeing suspect. An officer may use deadly force to prevent the escape of a fleeing person only if *all* of the following conditions are met:

- a. The officer has probable cause to believe the suspect has committed an offense in which the suspect caused or attempted to cause death or serious bodily harm; *and*

- b. The suspect will pose an imminent danger of death or serious bodily harm should the escape succeed; *and*
- c. The use of deadly force presents no substantial risk of injury to innocent persons.

25. There are specific circumstances in which the use of deadly force is prohibited. In general, officers may not discharge their weapons as a signal for help or as a warning shot, nor may they use deadly force in the following situations:

- a. Solely to prevent property damage or loss;
- b. Solely to prevent the destruction of evidence (for example, under no circumstances shall an officer use a chokehold, or any lesser contact with the neck area, in order to prevent the destruction of evidence by ingestion, unless life threatening to the actor);
- c. Solely to disable moving vehicles; or
- d. Against a person who poses a threat only to themselves (and not to others).

CORE PRINCIPLE #5: Officers must promptly provide or request medical aid.

26. Officers have a duty to provide prompt medical care. Officers shall always treat people with dignity and respect. Whenever a person is injured, complains of an injury, or requests medical attention, as soon as it is safe and practical, officers shall request medical aid (such as by contacting emergency medical services) and provide appropriate medical care consistent with the officer's training (such as by providing first aid and/or transportation to an emergency medical facility).

27. Officers have a duty to continuously monitor individuals for potential medical intervention after a use of force. Out of respect for the sanctity of life, officers shall closely monitor persons against whom force was used for signs that they require medical assistance. This responsibility applies during transportation and throughout custody. Officers should pay particular attention to persons believed to be pregnant, children, the elderly, and physically frail individuals.

CORE PRINCIPLE #6: Employees have a duty to stop and report uses of force that violate any applicable law and/or this directive.

28. Officers have a duty to prevent and stop illegal and inappropriate uses of force by other officers. Every employee has an obligation to ensure compliance, by themselves and others, with Department directives and regulations, as well as all applicable laws, regarding use of force. Any employee who observes an officer about to use force that is illegal, excessive, or otherwise inconsistent with this directive must, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events *before* the fellow officer does something that makes any official action necessary. Officers can serve each other and the public by simply saying or doing the right thing to prevent a fellow officer from resorting to force illegally or inappropriately. Similarly, any employee who observes an officer using force that is illegal, excessive, or otherwise inconsistent with this directive must, absent extraordinary circumstances, do whatever he/she can to interrupt the flow of events and *stop* the use of force.

- a. If a supervisor observes such a violation, the supervisor must issue a direct order to stop the violation.

29. Employees have a duty to report illegal and inappropriate uses of force by other officers. Any employee who observes or has knowledge of a use of force that is illegal, excessive, or otherwise inconsistent with this directive must:

- a. Notify a supervisor as soon as possible; *and*
- b. Submit an individual written report to a supervisor before reporting off duty on the day the officer becomes aware of the misconduct.

30. Employees are prohibited from retaliating against an employee who intercedes in or reports illegal or inappropriate uses of force. No employee may retaliate, in any form, against another employee who intercedes in or reports a violation of this directive, or who cooperates with an investigation into a possible violation of this directive.

NOTIFICATIONS REGARDING USES OF FORCE

31. Officers must immediately notify the Department of all firearm discharges. All firearm discharges by an officer must immediately be reported to the Department's Real-Time Tactical Operations and Intelligence Center and to the Camden County Prosecutor's Office. This requirement includes any discharge while an officer is off duty and all unintentional discharges, but does not include discharges during training and/or qualification sessions or recreational discharges.

32. Officers must immediately notify the Department of all critical use of force incidents. All use of force by an officer that results in death or serious bodily injury, and uses of a firearm by an officer that result in an injury of any degree, must immediately be reported to the Professional Standards Division and to the Camden County Prosecutor's Office.

- a. This notification shall occur before any investigation of the incident is undertaken, other than to secure the scene and to render medical assistance as required.
- b. The Prosecutor's Office shall conduct the subsequent investigation into the use of force in accordance with the New Jersey Attorney General's Supplemental Directive Amending Attorney General's Directive 2006-5. The Prosecutor's Office is also responsible for the necessary notifications to the Division of Criminal Justice ("DCJ"). DCJ may supersede the investigation where there may be a conflict or if the matter is better handled at the state level.
- c. When a prosecutor's detective or investigator, assistant prosecutor, or the prosecutor is involved in the use of force incident, DCJ shall be the lead investigating agency.
- d. If DCJ becomes the lead investigating agency, a shooting response team consisting of DCJ investigators and members of the New Jersey State Police Major Crimes Unit shall normally conduct the investigation.

33. Officers must report all other uses of force through the chain of command. All other use of force incidents—those that do not result in death or serious bodily injury and do not involve the discharge of a firearm—shall be reported through the appropriate Departmental chain of command.

REPORTING REQUIREMENTS & REAL-TIME REVIEW

34. All employees must complete their reports accurately and completely. All employees are responsible, at all times, for accurately and completely describing the facts and circumstances concerning any use of force incident, including articulating specific facts to explain an officer's own decision to use force. The Department may impose discipline for any substantial omissions or misrepresentations.

35. Every use of force greater than physical contact must be documented and reported. Whenever an officer uses a degree of force greater than physical contact, the officer must complete the following reports and submit them through the appropriate Departmental chain of command:

- a. A State of New Jersey—Use of Force Report; *and*
- b. A Department Blue Team—Use of Force Report; *and*
- c. An investigation report and/or supplementary report regarding the nature of the underlying incident (and indicating that the officer has completed Use of Force Reports), with the following conditions:
 - In accordance with New Jersey Attorney General's Supplemental Directive Amending Attorney General's Directive 2006-5, supervisors shall not require officers deploying force that results in death or serious bodily harm, being investigated by the Attorney General's Office, a county prosecutor's office, or DCJ to submit investigation or supplemental reports. Officers are still required to submit Use of Force reports.
 - Only the New Jersey Attorney General's Office, a county prosecutor's office, or DCJ can order such reports. An officer's statements to these entities can suffice as their report of the incident.
 - Officers not directly involved in the use of force, but who have indirect involvement (*e.g.*, secondary responders, assisting responders, witnesses, etc.), may be required to submit investigation reports upon approval of the lead investigating agency (*i.e.* New Jersey Attorney General's Office, Camden County Prosecutor's Office, or DCJ).
- d. A Conducted Energy Device Deployment Review Report (if a CED is used);
- e. An Informational Report (if a CED is used); *and*
- f. A Police Use of Deadly Force—Attorney General Notification Report (if applicable).

36. The following additional reporting requirements apply to an officer's actions that do not involve physical contact or greater force under Section 35. An officer who takes any of the following actions, if not otherwise reportable under Section 35, must create a written incident report and/or supplementary report capturing the relevant facts and circumstances for each of the following situations:

- a. Every intentional discharge of a firearm not for training or recreational purposes;
- b. Every instance where an officer unintentionally discharges a CED or firearm, regardless of the reason;
- c. Every instance where an officer takes an official action that results in or is alleged to have resulted in death or injury to another person.

37. Supervisors have specific responsibilities as part of each use of force review. The approving Sergeant (or other supervisor) and Watch Commander shall review all reports for accuracy and completeness and shall promptly address any issues, including: policy changes, training needs, weapons or equipment issues, or discipline (*i.e.* an administrative review). Recommendations to modify policy, apply remedial training beyond what can be performed by the supervisor, change weapons, equipment, or tactics, or apply discipline shall be thoroughly documented and forwarded through the chain of command.

a. Sergeants have the following responsibilities:

- Ensure all required paper reports and related documents are complete and submitted, review them for accuracy and completeness, and either reject and return for immediate corrections or approve;
- Review all relevant documents and information, including body-worn camera video and photographs, in order to assess the underlying incident and complete an Administrative Review Report;
- Log into Blue Team, review the submitted Blue Team Report, and either reject and return for corrections or approve; *and*
- Assemble all reports and relevant documents and immediately submit them to the Watch Commander.

b. Watch Commanders have the following responsibilities:

- Review all submitted reports, body-worn camera video, photographs, and any other relevant information or documents;
- Log into Blue Team, review the submitted Blue Team Report, and either reject and return for corrections or approve;
- Complete the Use of Force Command Review Report and forward it to Executive Command personnel;
- Scan and attach the Use of Force Command Review Report and all submitted documents to the Blue Team report; *and*
- Forward the Blue Team Report with attachments to the Internal Affairs Unit in Blue Team and forward all paper documents to the Internal Affairs Office (2nd Floor) via inter-office mail.

38. Use of force records shall be retained and available according to state law. All use of force reports shall be retained as required by the New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) records retention schedules. Use of force reports are subject to discovery and access through the New Jersey Open Public Records Act.

INTERNAL AFFAIRS USE OF FORCE REVIEW

39. Use of force incidents will be reviewed by Internal Affairs according to set procedure.

Once a Use of Force Administrative Review Packet has been completed and submitted from the Watch Commander to Internal Affairs, the following procedure will be followed:

- a.** Review the Use of Force Administrative Review Packet to ensure all relevant documents are attached and signed, including:
 - Command Review Report
 - Sergeant Administrative Review
 - Incident Report
 - Use of Force Card
 - Use of Force Report
 - Blue Team Report
 - CAD Ticket
 - Arrest Report (if applicable)
 - Tickets/Summons
 - Impound Report
 - Victim Notification Report
 - Medical Discharge Forms (if applicable)
 - Victim Notification Form
 - Photographs
 - Any other additional documentation
- b.** Review the Command Review Report for the Watch Commander's findings and whether the officer(s) involved followed Department policy and procedures;
- c.** Review the Sergeant's Administrative Review for its findings and whether the officer(s) utilized the Critical Decision-Making model;
- d.** Review the Incident Report to gain a situational understanding of the reason force was utilized;
- e.** Review the officer's body-worn camera footage to ensure the force was necessary, proportionate, and reasonable;
- f.** Compare the officer's actions as displayed on the body-worn camera footage with the officer's Incident or Additional Information Report, Use of Force Report, and Blue Team Report (repeat for all officers who utilize force in each incident);
- g.** Review all other body-worn camera footage, including from responding officers, to gain a full panoramic view of the incident;
- h.** Upload and link all documents into IAPro, along with all body-worn camera footage, Audio Log Transmissions, Blue Team Reports, witness officers involved, and Administrative Review forms;
- i.** If there are no issues identified with the incident or the Administrative Review Packet, the incident is routed (via IAPro) and the hard copy of the Review Packet is provided to the Internal Affairs Commander for review;
- j.** If there are any issue(s) identified with any application of force, documentation, or body-worn cameras, the Watch Commander (who reviewed the incident) and the reviewing supervisor are contacted and made aware of the issue(s) and provided a date as to when the issue(s) must be resolved and corrected;
- k.** If training issues are identified, the issues are brought to the attention of the Internal

Affairs Commander (once the issue is confirmed, the Professional Development and Training Division is contacted, via an EIS Request for Training, for corrective actions);

- I. If any criminal or rule violations are identified, an Internal Affairs complaint is generated. Rule infractions are forward to Command Level for investigation. Criminal or serious violations are investigated within the Office of Internal Affairs.

USE OF FORCE DATA COLLECTION & ANALYSIS

40. The Department shall collect and analyze use of force data. This Department collects, analyzes, and makes public data regarding uses of force. The Department does so in order to ensure our enforcement practices are fair, non-discriminatory, and involve the minimum amount of force necessary to accomplish a legitimate law enforcement objective.

41. The Professional Standards Division shall issue an annual use of force report and analysis.

- a. The Professional Standards Division is responsible for completing an annual use of force summary report in a manner prescribed by the Camden County Prosecutor. This summary report shall be published and made available to the public upon request.
- b. The Professional Standards Division is responsible for completing an annual analysis of the previous calendar year's use of force incidents, Department polices, and use of force practices. Examples of some analytical categories may include, but are not limited to:
 - Use of force by time of day and day of week;
 - Use of force by type of location (*e.g.*, business, residential, or industrial);
 - Use of force by type of incident;
 - Use of force by officer/detective involved;
 - Use of force by division, bureau, unit;
 - Use of force by person's actions;
 - Use of force by type (*e.g.*, deadly force);
 - Use of force resulting in injury to personnel;
 - Use of force resulting in injury to actors;
 - Use of force resulting in arrests;
 - Percentage of use of force vs. total number of custodial arrests.
- c. The Professional Standards Division's annual analysis is designed to: (1) identify any broad patterns or trends that could indicate policy ineffectiveness, training needs, equipment upgrade needs, and/or policy modification needs; and (2) identify any pattern or practice of behavior by particular officers that could warrant intervention, remediation, and/or re-training.

TRAINING REGARDING USE OF FORCE

- 42. All officers shall be issued this directive and receive use of force training.** Prior to being authorized to carry a weapon, all personnel shall receive training regarding use of force and a copy of this directive. The training and issuance of the directive shall be documented and forwarded to the training unit.
- a. A certified instructor shall train all employees who are or may be assigned to duties that require the application of less lethal force.
 - b. Training in the use of chemical or natural agents, such as oleoresin capsicum (OC), mace, gas, etc., shall include procedures for the treatment of persons exposed to such chemical/natural agents, as well as safe handling and storage procedures.
 - c. Prior to being authorized to carry and use less lethal ammunition or control and restraint techniques, employees must demonstrate proficiency in the deployment and/or use of such authorized less lethal ammunition and approved control and restraint techniques.
- 43. The Department shall conduct semiannual use of force trainings.** Use of force training shall be conducted semiannually, in concert with the Attorney General's Guidelines. This training must:
- a. Reflect current standards established by statutory and case law, as well as state, county, and Departmental policies, directives, and guidelines;
 - b. Be scenario based;
 - c. Include the use of force in general, levels of force, the use of deadly force, definitions of critical terms, critical decision making, crisis recognition and response, tactical communications, operational safety tactics, the limitations that govern the use of force and deadly force, and all applicable aspects of Departmental directives;
 - d. Integrate the Integrating Communications Assessment and Tactics Training Guide, published by the Police Executive Research Forum; and
 - e. Be documented (electronically is permitted) each time it is conducted, listing all personnel being trained.
- 44. Officers have an ongoing obligation to review Department directives and trainings on use of force.** All officers have an ongoing obligation to review the Department's use of force directives and training materials, and to seek clarification any time they have questions or need guidance. This ongoing review may take place via formal supervisor-led training sessions as well as through mentoring opportunities to reinforce the content and philosophies.

DEFINITIONS

<p>1. Active Assailant: A person who is using or imminently threatening the use of force against another person, with or without a weapon, in an aggressive manner that poses an imminent danger to an officer or another person.</p>
<p>2. Active Resistance: A person who is uncooperative and fails to comply with directions from an officer, and instead attempts to avoid physical control and/or arrest by creating distance between themselves and the officer or the officer's reach. This type of resistance includes but is not limited to evasive movement of the arm, flailing arms, and full flight by running.</p>
<p>3. Canine Apprehension: A properly trained police canine may be used to apprehend an Active Resister whenever the handler has probable cause to believe the person has committed a crime, and less intrusive means of apprehension have been exhausted or, under the circumstances, determined to be ineffective or unavailable. Additional guidance may be found in Department directive CCV4C5.</p>
<p>4. Chokehold: Sometimes referred to as a Neck or Carotid Restraint, a chokehold is a technique that involves applying direct pressure to a person's trachea (windpipe) or airway (front of the neck) with the intention of reducing the intake of air. A Carotid Restraint is a technique that applies direct pressure to the carotid artery (on the side of the neck) restricting the flow of blood to the brain and causing a temporary loss of consciousness.</p>
<p>5. Compliance Techniques: Physical techniques that involve the use of non-impact pressure to sensitive areas of the body (mainly areas of skin covering bone) in order to elicit and maintain control of a person. Compliance techniques include joint manipulation and pressure point techniques, but do not include any technique that restricts blood flow to carotid arteries, causing a person to lose oxygen to the brain.</p>
<p>6. Conducted Energy Devices (CED): A CED is any device approved by the New Jersey Attorney General that is capable of firing darts/electrodes that transmit an electrical charge or current intended to temporarily disable a person. Additional guidance may be found in Department directive CCV4C3.</p>
<p>7. Control Instruments: Tools (such as a baton) applied with non-impact pressure to joints and sensitive areas of the body (mainly areas of skin covering bone) in order to elicit and maintain control of a person. Additional guidance may be found in Department directive CCV3C3.</p>
<p>8. Cooperation: Responsiveness to and compliance with officer requests.</p>
<p>9. Critical Decision-Making Model: The Critical Decision-Making model or "CDM" is an organized way of making decisions about how an officer will act in any situation, including situations that may involve potential uses of force.</p>
<p>10. Deadly Force: Force that an officer uses with the purpose of causing, or which the officer knows to create a substantial risk of causing, death or serious bodily harm. Deadly force is not limited to firing a firearm in the direction of another person, but also includes other particularly dangerous tactics as discussed in Section 20 of this directive.</p>
<p>11. De-escalation (De-escalation Techniques): Actions taken by an officer meant to stabilize a situation and reduce the immediacy of a potential threat so that a potentially dangerous situation with voluntary compliance and without resorting to force.</p>

<p>12. Employee: Any employee of the Camden County Police Department, full or part-time, sworn and non-sworn.</p>
<p>13. Holding Techniques: Holding techniques include a firm grip or grab of an arm, wristlocks, come-along holds (<i>i.e.</i> escort holds that are not elevated to compliance techniques), controlled take-downs, and pins against the ground or objects, as well as any combination of the above.</p>
<p>14. Imminent Danger: Imminent danger describes threatened actions or outcomes that are immediately likely to cause death or serious bodily harm to an officer or another person, unless action is taken. In order to be <i>imminent</i>, the person threatening danger must have the means/instruments and opportunity/ability to cause death or serious bodily harm. The threatened harm does not have to be instantaneous. The period of time involved is dependent on the circumstances and facts of each situation and is not the same in all situations.</p>
<p>15. Impact Weapons: Weapons designed to establish control by means of applying mechanical impact to a person to disable elements of his or her musculoskeletal structure. Impact weapons include batons and less lethal ammunition. The Department trains officers to avoid the use of flashlights, radios, firearms, or any item not specifically designed as an impact weapon, unless immediately necessary and no other practical options are available. Additional guidance may be found in Department directive CCV3C3.</p>
<p>16. Officer: Also known as a law enforcement officer. Any person sworn to enforce the criminal laws of the State of New Jersey, who is certified by the Police Training Commission, or is currently employed by a public safety agency and is authorized to carry a firearm under N.J.S.A. 2C:39-6.</p>
<p>17. Oleoresin Capsicum Spray: Also known as OC Spray or Pepper Spray, this is an inflammatory chemical agent that causes an intense burning sensation of the skin, eyes, and mucous membranes. Direct exposure to a person's eyes will likely result in the eyes closing, tearing, and swelling. When inhaled, a person experiences choking, gagging, gasping for breath, or, on rare occasion, unconsciousness. As a result of these symptoms, a person may experience nausea or temporarily impaired thought processes, or may become disoriented or lose his or her balance.</p>
<p>18. Passive Resistance: A person who is not cooperative, in that the person fails to comply (in a non-movement way) with verbal or other direction from an officer.</p>
<p>19. Physical Contact: Routine or procedural contact necessary to effectively accomplish a legitimate law enforcement objective. Examples include, guiding a subject into a police vehicle, holding the subject's arm while transporting, handcuffing a subject and maneuvering or securing a subject for a frisk.</p>
<p>20. Physical Force: Forceful, concentrated striking movements such as punching and kicking, or focused pressure strikes and pressures. These techniques can be combined with take-downs or pins against the ground or other objects.</p>
<p>21. Police Presence: Police presence established through identification of authority and proximity to the person.</p>
<p>22. Proportionate Force: Actions, including de-escalation and force, which correspond appropriately with the particular circumstances confronting the officer.</p>
<p>23. Professional Standards Division: Division within CCPD that includes the Internal Affairs</p>

<p>Section, which is responsible for the investigation of all internal complaints, and the Quality Assurance Section, which is responsible for managing the department's in-service training curriculum as well as completing various audits of department processes.</p>
<p>24. Real-Time Tactical Operations and Intelligence Center: The RT-TOIC maintains a real-time awareness of conditions of certain places within the Department's integrated technology platform and monitors the tactical deployment of all Department assets in the field to ensure compliance with the Department's weekly crime reduction plan. RT-TOIC also deploys virtual patrollers utilizing the Department's CCTV camera system, and manages police dispatch and 911 functions.</p>
<p>25. Substantial Risk: A substantial risk is one that is foreseeably likely to occur. That is, the risk is one that a reasonable officer in the same circumstances should anticipate as the likely outcome.</p>
<p>26. Tactical Communication: Verbal communications techniques that are designed to avoid or minimize the use of force. Such techniques include attempts to exercise persuasion, advice, instruction, and warning prior to the use of physical force.</p>
<p>27. Tactical Positioning: Making advantageous use of positioning, distance, and cover to isolate and contain a person and avoid the need to resort to force.</p>
<p>28. Threatening Assailant: A person who is using or threatening the use of force against another person, with or without a weapon, in an aggressive manner that may cause physical injury. Examples may include: (1) a person who puts an officer in fear of a battery by advancing on the officer in a threatening manner or closing the distance between the assailant and the officer, thereby reducing the officer's reaction time, and (2) a person who fails to disarm, thereby increasing the likelihood the person's actions are likely to cause physical injury.</p>
<p>29. Time as a Tactic: Establishing a zone of safety around a person that creates an opportunity for an assessment and action, when feasible, thereby decreasing the need to resort to force.</p>
<p>30. Verbal Control Techniques: Consists of persuasion, advice, instruction, and warning in the form of verbal statements or commands that may result in compliant behavior. Whenever it is safe and feasible, officers shall attempt to de-escalate confrontations by utilizing verbal control techniques prior to, during, and after the use of physical force.</p>