

PROGRESS REPORT

**CITY OF CINCINNATI COLLABORATIVE AGREEMENT
BIAS-FREE POLICING AND OFFICER ACCOUNTABILITY**

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TABLE OF CONTENTS

INTRODUCTION.....	1
ARRESTS, TRAFFIC STOPS AND PEDESTRIAN STOPS	4
BODY WORN CAMERAS AND MOBILE RECORDINGS.....	13
RISK MANAGEMENT SYSTEM.....	15
TRAINING	17
CITIZEN COMPLAINT AUTHORITY	19

INTRODUCTION

In April, 2002 the City of Cincinnati, community stakeholders, and the members of Lodge 69 of the Fraternal Order of Police signed the Cincinnati Collaborative Agreement. This historic agreement is vital for a number of reasons. First, the year-long negotiations involved community members, representatives of the police union, the Cincinnati government, and the U.S. Department of Justice. Second, the Collaborative Agreement directly addresses the city's policing strategy, in addition to policy and practices focused on individual officers' performance. Third, the Collaborative Agreement continues to be a vital guide for policing policy in the City of Cincinnati fifteen years after it was signed.

Even the most casual observer of national events cannot help notice that in many cities, police and members of their communities are often in conflict. The events depicted in newspapers, television, and on social media can give a distorted picture of typical police-public encounters: millions of which are unremarkable if not positive. But it is true also that many disturbing events are not brought to public attention. The Cincinnati Collaborative Agreement was and continues to provide a set of mechanisms to address real and perceived difficulties, often before they cause discomfort to the general public.

The police may be the most important arm of local government. The police assure that all other branches of government can function. And the police provide the assurance necessary for daily commercial and private activities. For these reasons, addressing friction between police and members of the public is vital for both the police and the public they help.

The United States has had a long history of racial conflict that has resulted in many of the inequities we face today. All of us live with the burden of our history. Addressing historic inequities in an extraordinarily complex society is not simple, quick, or easy. The Collaborative Agreement was a beginning. It provided an opportunity for Cincinnati to move forward. The national and international positive notoriety that has come to Cincinnati after the agreement was signed has been recognition of the leadership the people of Cincinnati have provided.

After 15 years, however, it is important to take stock in our progress, acknowledge deficiencies, learn from our successes and mistakes, and refresh the agreement. The Collaborative Agreement has helped to guide three mayors, three city managers, and four police chiefs. During this time Cincinnati has experienced even more changes in city council, among the command staff of the police, and among community leaders. There has been considerable change in the rank-and-file of the City Police Department: many in the current police service were not police officers in 2002. Further, residents of Cincinnati have changed. Children, who in 2002 were unaware of the Collaborative's signing, are now adults. New residents have moved into the city in this decade and a half. To maintain the relevancy and utility of the Collaborative Agreement, it is critical to provide an opportunity for those who were not involved in the development of the original agreement to have a voice in the refreshed agreement.

There is no alternative to a Collaborative Agreement in some form. We have experienced the difficulties the police and the public faced before the agreement. And we routinely see the difficulties faced by other communities who have not developed their own agreements. In

Cincinnati, over the last 15 years, crime declined. This may or may not be due to the Collaborative Agreement: it is impossible to tell. Still, while crime has been declining, police have arrested fewer and fewer people, and they have used less and less force against members of the public. Again, there are many factors that may have caused these drops. Nevertheless, the Collaborative Agreement provided a framework for understanding that the police can be effective, lawful, and fair. We do not have to choose between safety and fairness.

The Collaborative Agreement is based on the premise that we can have both. In the efforts to refresh the agreement, it is also important to recognize the foundational principles upon which it rests: involvement of all stakeholders, both from within policing and from outside, to find ways for Cincinnati to provide safe living and working environments through the least use of governmental powers, and to do both equitably.

This report, authored by four independent policing experts, is the first of three reports we have been tasked with providing. This report is our assessment of the city produced document: *Collaborative Agreement Provisions Evaluation: Bias-free Policing and Officer Accountability*. The structure of our assessment follows the structure of the city's report. In each section we discuss the information the city provided and give a critique of this information using our experience working with police agencies throughout the United States, best practice, police research, data analysis, and statistical presentation. At the end of each section we provide recommendations designed to build on the foundation created by the Collaborative Agreement.

ARRESTS, TRAFFIC STOPS AND PEDESTRIAN STOPS

I. Overview

In this section, we evaluate the Cincinnati Police Department's self-evaluation report that addresses questions of racial disparities in its policing.

This section of the report addresses two of the five objectives envisioned by the Collaborative Agreement (CA):

- (1) Improve Education, Oversight, Monitoring, Hiring Practices and Accountability of CPD, and
- (2) Ensure Fair, Equitable, and Courteous Treatment for All.

In pursuit of these objectives, the data generated through the terms of the Collaborative Agreement provided a foundation for statistical analyses to “identify and better understand the reasons for statistical differences [in] arrests, traffic stops, and pedestrian stops.”¹ In addition, the data provide a foundation for the City's efforts to “[i]dentify potential “at-risk” police officers – those likely to engage in damaging behavior – before the behavior occurs.”²

This section of the report reviews the data analysis developed to pursue these goals, and assesses the evidence generated from these data to determine progress toward bias-free policing. To fully understand this analysis, we also review limitations of the data, and of the analysis. The report is organized into three sections:

An analysis of what the data say;

An analysis of what the data do not say that also might be important. This analysis reviews the limitations of the data analysis provided in the first CPD report;

Recommendations both for strengthening the data infrastructure so the CPD can generate information useful for assessing bias. This includes also recommendations for the institutional infrastructure to create capacity to fully exploit the informational resources of the CPD databases.

II. What the Data Say

Summaries

The Introduction and Overview of the CPD's self-assessment provides a useful summary of the results of the descriptive statistics. The report summarizes activity in traffic stops, pedestrian stops, and statistics compiled from Contact Card data.³ “Notable Arrest Trends” in Table 1 uses

¹ City of Cincinnati & Cincinnati Police Department, Collaborative Agreement Provisions Evaluation: Bias-Free Policing and Officer Accountability, July 2017, at 5.

² Id.

³ See Appendix A for a replica of the Contact Card. Each stop generates a contact card that convey

varying periods of time in arrests by charge, gender, and race of suspect. This variation makes it difficult to form consistent impressions of long-term changes because the trends described vary depending on the time window. For example longer term trends (2000-2016, 2007-2016, 2010-2016) show reductions in most arrest categories. However, trends in the past two years (2015-16) show increases in most arrest categories, regardless of race. Nor are these data linked to crime reports. For example, an increase in arrests can be interpreted differently if reported crime is increasing than if reported crime is declining or stable. This makes it difficult to see if these increases are proportional to the distribution of reported crime by race, gender or age. A standardized reporting format would provide a more accessible entry into temporal patterns and allow readers to draw their own conclusions.

The reliance on percentages presents another difficulty in interpreting these data. Without knowing the actual numbers of arrests (what is often called the “base rate”) from which the estimates are derived it is difficult to interpret these figures. For example, a 63.5% reduction in misdemeanor arrests might be viewed differently if the rate were 5,000 per year compared to 50,000 per year. Arrests by race would be more informative if reported not just by percent reductions but by the racial and ethnic composition of the arrests (i.e., arrests of members of each group as a proportion of the members of the group). This information appears in the appendices, but not all readers will get through a dense statistical report to those charts. We discuss those charts below, including the presentation of the data in that format.

Table 2 shows “Notable Criminal Charge Trends.” Here, the reporting changes from percentages to narratives (with one dramatic exception – juvenile disorderly conduct charges). The time periods are standardized here, making comparisons easy, but the absence of either numbers, rates or percentages makes it hard to evaluate the narratives. The discussion of changes by race is postponed to the appendices.

The discussion of demographic trends – mainly by race, population and neighborhood – is shown in a set of maps, in Appendix E. These data are presented without discussion or interpretation. We discuss these tables below.

Table 3 provides data on Use of Force (UOF) and Canine Deployment. Here, the reporting style switches from narrative or percentage to raw numbers. The reporting period is standardized to 2007-2016, which is helpful. The percent changes reported in the last column show changes over the entire time period. That summary statistic is helpful, but leaves open many other questions or inconsistencies:

- (1) Why is “use of force investigation” included in the table?
- (2) What is the percent of incidents in which each of these types of UOF occur? In other words, can column percentages be reported for each year for each type of UOF? For example, Tasers are deployed in slightly more than half the incidents in 2007 (388/734) compared to slightly under half (185/438) in 2016. This is an important indicator of UOF, perhaps more so than the change in Taser deployment over time.

relevant information about the person stopped or contacted, the circumstances of the stop and the outcome of the stop.

- (3) Is there only one type of UOF per incident? What is the average number of UOF types per contact?
- (4) The increase in prisoner injuries in 2015-16 after declining in previous years will present readers with a question that deserves some explanation.

In the future, the CPD may want to report canine statistics with other UOF data, rather than separately. It is hard to tell if the 372 canine incidents in 2016 are included in the 413 total UOF incidents that year, or if these are separate measures. There also is no mention of trends by race.

A. Appendix Details

(1) Appendix B – Contacts

Several tables present Contact Card data for the period 2009-2016. Although tables on arrests and criminal charges present data from 2000 to the present, these tables report only on the most recent eight years. As a public report, an explanation for the different year ranges would be useful.

As with other presentations, data here include numbers only. They are not disaggregated by race or any other demographic indicator, suspected crime or basis of suspicion for the stop, or by the outcome of the stop.

Data here are not disaggregated by the neighborhood or police district where the stop took place.

There are no breakdowns by year to determine if stop activity is changing in some meaningful way. For example, there are no data on the concentration of stops by officers. It is well established that much police activity is concentrated among a small percent of officers (commonly referred to as the “80/20 rule”). Showing this concentration can be useful. It would also be useful to have information on stops that do and stops that do not result in arrest or seizure of contraband. One would be interested in knowing if differences in stop rates across race are due to high levels of police activity by a small group of officers operating in a particular area, or whether it is spread among many officers in many areas.

A clear detailed description of stops is essential for determining the usefulness of stops and for developing processes for reducing racial differences in impact. It is safe to say that these data are severely under-analyzed in ways that are critical to assess whether CPD is progressing toward goals of bias-free policing. Very few of the data items recorded on contact cards are analyzed, or even described.

(2) Appendix C - Arrests

Appendix C tables begin with arrest numbers, rather than percentages. The bar charts illustrate changes over time in the numbers and the composition of arrests. It contains charts showing changes by race, age and crime severity, as well as breakdowns by gender. Unfortunately, there are no population or crime base rates for the arrest charts, so there is little basis for comparisons in other than totals by main categories and sub-categories. Arrests per population, or arrest per crime, would begin to provide some insight into what these numbers imply about policing. Is the

reduction in arrests due to more precise policing, or is it reflective of fewer crimes, or something else?

The last set of tables in Appendix C provide an illustration of the limitations in these analyses, and the impossibility of drawing conclusions. In 2016, total arrests for Black males were more than twice as high in number than for white males. There were more than 14 times as many juvenile misdemeanor arrests of Black males compared to white males. These stark differences are unadjusted by population differences. It is possible, that some of this difference is due to differences in demographics: if for example the white population is significantly older (having fewer males in the age range 15-30) than the black population. It would also be helpful to know if these differences in arrest vary across neighborhoods with different crime rates. These limitations in how the data are presented and analyzed complicate any understanding of differences between groups within and across years.

(3) Appendix D – Criminal Charges

Appendix D presents data on criminal charges resulting from arrests. These are presented as percentages in some tables and raw numbers in others. A second chart shows percentages broken down by detailed crime measures that correspond roughly to the FBI's Uniform Crime Reporting categories. There is no discussion of the logic for these breakdowns. Detailed charges are shown in one table, and a comparison of charge distributions between 2000 and 2016 appears in another.

As in the arrest tables, the rationale for treating adult and juvenile arrests or charges as subparts of the CPD arrest activity is not obvious. Juvenile arrests are different for a variety of reasons, including different criminal career patterns and different administrative rules for processing arrests. Separate comparisons of juvenile and adult charges would be appropriate. For example, we might ask whether the ratio of felony to misdemeanor arrests is changing over time for juveniles or remains unchanged even as the total number of juvenile arrests decline. We also may want to compare juvenile and adult arrests to determine where police are focusing enforcement.

Perhaps most important for Appendix D is the absence of an overall comparison of arrest charges by race for either juveniles or adults, as well as comparisons by felony and misdemeanor. Where there are race comparisons (e.g., drug offenses and liquor law violations), these are presented as raw numbers without standardization as percentages or population rates. These standardized measures are necessary for any evaluation of bias-free policing. Comparisons of high discretion arrest charges (e.g., liquor law violations, disorderly conduct) by race and age are presented, but comparisons for low discretion arrest charges (e.g., assaults, theft) are not.

(4) Appendix E – Crime Maps

These are interesting presentations of the distribution of crimes across neighborhoods, but are limited in two important ways:

- The data are presented by population and crime type, but are not presented by crime type and racial composition. Each dimension is treated separately.

- The data are recent. There are no historical data to compare change in the neighborhood crime rates or population composition historically.

Accordingly, these displays are not helpful in determining the extent to which CPD is advancing toward the goals of bias-free policing.

III. What the Data Do Not Say

A. Bias in Stops

The question of “bias-free” policing is both a policy question and a law question. In both arenas, it is a question that asks whether police contacts and actions are distributed fairly and evenly across populations, relative to a benchmark that permits such comparisons. For example, to evaluate biases in police contacts, we want to know if:

- (1) Police contacts are distributed by race proportionately to local crime rates in the locations and neighborhoods where stops take place. Concentration of contacts should be proportionate to the rates of crime in different parts of the city.
- (2) The bases of suspicion or the suspected crime in police contacts are similar across racial or ethnic groups.
- (3) The outcomes of contacts are proportionate across races, genders or age groups (e.g., arrests or citations, contraband seizure).
- (4) If the conduct of officers during the contact are consistent across races (e.g., use of canines, use of other force).

Accordingly, data showing stops or contacts by race as a function of local crime conditions and population composition is central to the question of bias-free policing. These analyses can be extended to estimate the extent or lack of bias in the bases of suspicions for contacts or stops, the outcomes of stops, the use of force during stops, and the neighborhood locations of stops. Unfortunately, the contact card data do not include a category for officers to indicate the crime that was suspected as the reason for the stop or contact, apart from the basis of suspicion that that specific crime was “afoot.”⁴ This information is essential to estimate whether stops are proportionate not only to race and other demographic markers, but also whether stops are distributed proportionality within categories of crimes. For example, stops based on suspicion of a violent crime should reflect the violent crime rates in a neighborhood. The alternative is a pattern of pretextual stops⁵ that are divorced from the facts of crime conditions in the places where police activity takes place.

⁴ “Even a reliable tip will justify an investigative stop only if it creates reasonable suspicion that ‘criminal activity may be afoot.’” *Terry v Ohio*, 392 U.S., at 30, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

⁵ A pretextual stop occurs when an officer is suspicious of the behavior of a vehicle’s occupants and uses a reason unconnected with their behavior to justify the stop. For example, an officer suspects the occupants of a vehicle are transporting drugs. The officer notes a damaged tail light and stops the vehicle for this infraction. The damaged tail light serves as a pretext for the stop. See, e.g., *U.S. v. Whren*, 517 U.S. 806 (1996) (noting that [a]n officer’s motive does not “invalidate [] objectively reasonable behavior under the Fourth Amendment.” See, also, David A. Harris, *Driving While Black and All Other Traffic*

The outcomes of stops should also be distributed proportionately by race. If stops of one racial or ethnic group consistently lead to no police action, one might infer that police were not bias-free. This pattern of skewing reasonable suspicion by race was characterized in a recent court opinion as “indirect profiling.”⁶

The same analyses can be conducted to examine proportionality by race in arrest activity. Arrests by race should also be proportionate to the crime rates in the neighborhood, controlling for local racial population. These analyses can and should be disaggregated by charge.

B. Bias among Officers

Accountable policing also includes estimates of bias by individual officers. The Risk Management / Early Intervention process (see below) applies analytic methods to capture information on patterns of use of force, injuries to arrestees or prisoners, citizen complaints, and other information on the everyday activities of CPD officers across units. The analysis – Organizational Group Analysis – identifies “at risk” employees who exceed “established thresholds” for the preceding 12-month period. These methods were developed by a private vendor under the CPD and Department of Justice Memorandum of Agreement (MOA 62), and incorporated into an Employee Tracking Solution. The private vendor is no longer under contract with the City and a new procedure for evaluation of officer activity is being developed at this time.

Table 4 presents statistics on officers identified for intervention using the metrics and data developed by this system (see Appendix K). The rates are very low: between 1.7% and 2.9% annually from 2014-16. Data from earlier years were not provided. Depending on the level of review, between 23 and 45 officers were identified for intervention, a small fraction (less than 2% of sworn officers in any of the three years from 2014-16). A total of 57 interventions were conducted during the three year period.

The report is rich in detail about the ETS design and the intervention processes (see below). But the report is silent on the specific patterns of officer conduct that would lead to an intervention at any level of review. In particular, there is no evidence in the report that bias has been present as a factor motivating the reviews or interventions.

The design for analysis of the officer data should be elaborated, and the analysis of the data should be updated regularly. For example, the Organizational Group Analysis applies metrics

Offenses: The Supreme Court and Pretextual Traffic Stops, 87 J. CRIM. L. & CRIMINOLOGY 544 (1996-1997).

⁶ *Floyd v. City of New York*, 959 F.Supp.2d 540, 562 (S.D.N.Y.2013) (“Floyd Liability Order”) (finding that the City had violated the Fourth and Fourteenth Amendments by acting with “deliberate indifference” toward the NYPD’s practice of making suspicionless “stops” and “frisks” and by adopting “a policy of indirect racial profiling by targeting racially defined groups” for “stops” and “frisks.”)

“to identify employees who exceed the established activity thresholds for the preceding year.”⁷ The analysis examines activity thresholds and standard deviations to identify those officers who may require intervention. This is a data-driven procedure. The report does not mention:

- (1) The data elements included in the analysis.
- (2) The weight assigned to each element.
- (3) Whether the analysis is global across police activities or disaggregated to examine activity categories separately.
- (4) The role of racial disparities in the analyses.
- (5) What level of standard deviation triggers a recommendation for intervention?
- (6) The number of officers who are subject to repeat interventions, and the response to those officers.
- (7) The frequency of updating the algorithms to identify officers in need of intervention.

Only for one element – arrest statistics – is there a specific mention of race differences. This is indeed helpful in filling out the evidence of officer bias and the need for intervention. One area to extend this analysis productively with respect to officer bias is in examining the outcomes of arrests, as well as the bases for both contacts (reasonable suspicion) and arrests (probable cause). One dimension of bias that can be analyzed is patterns among officers where arrests are declined for prosecution or dismissed in court. A pattern of outcomes are above a standard deviation threshold, or a pattern of racial differences in those outcomes, could also be examined statistically to determine if bias-related interventions are warranted. These indicia are consistent with the identification of bias not only in the extent of contacts, but in the application of law with respect to those patterns.

IV. Recommendations

A. Improvements to Data Analysis

- (1) Increase use of spatial analysis by incorporating detailed geographical coordinates of all police activities and linking to non-criminal justice indicia about neighborhoods and police districts.
- (2) Link contact card data to arrest data to improve measures of efficiency and quality of contacts.
- (3) Aggregate of data by individual (while safeguarding privacy) to more closely measure the difference between incidence of a contact or arrest and prevalence among individuals
- (4) Link contact card information and arrest data with civilian complaint data to develop additional metrics of officer compliance with policy, law and procedure.

⁷ Report at 13.

- (5) Aggregate data by neighborhood and police district to facilitate estimates of racial differences in policing contacts and outcomes.

B. Future Directions for Data Analysis

There have been multiple studies of police conduct with respect to the characteristic of bias-free policing. There are ample statistical and analytic technologies to provide a basis for integration of these data to provide robust tests for bias-free policing. From the available technology, CPD can develop and adopt analytic models to assess:

- (1) Events – metrics to identify differences in how events are handled by race.
- (2) Officers – metrics to identify differences in how officers handle citizens.
- (3) Proportionality - measures of differences in allocations of officers and activities to places and CPD units.
- (4) Impact – metrics to identify differences in outcomes of police actions.
- (5) Institution – measures of department responses to detected.

C. Future Directions for Data Communication

The format and manner in which data is displayed needs greater attention, if communication with the public is to be enhanced. In particular, formats of the following should be tested for public understanding:

- (1) Priorities for data reporting should be developed both through internal CPD collaborations, collaborations with community partners, and in consultation with experts.
- (2) Tabular displays should examine comparisons across important measures of police conduct, with attention to parameters of bias.
- (3) These analyses should use consistent metrics: percentages, race-specific population rates, and change over time.
- (4) Graphical Displays – Charts, Figures should be used to show results of complex analyses that rely on multivariate analyses to show the complex relationships among metrics of bias.

D. Institutional Design for Transparency and Collaborative Data Analysis

- (1) Develop CPD capacity for complex and routinized data analysis and reporting.
- (2) Create open-source data to invite alternate analyses in response to questions of interest to various constituencies and communities.
- (3) Encourage collaborative data analysis and problem-solving on bias concerns between CPD analysts, experts and constituencies.

E. Collaborative Problem Solving for Bias Free

Bias-free policing as an ongoing improvement process for which all parties have a responsibility. It is unlikely there is a single simple answer to addressing real and perceived bias. Rather movement toward bias-free policing will require much of the same type of approach the Collaborative Agreement takes toward crime and disorder problems. Involving the parties to the CA, and holding all accountable, for progress will be essential for success. Therefore, we recommend that the parties to the CA:

- (1) Create agreed upon targets, measurements, time periods, and formats for portraying routine data analysis. We have discussed some of these issues above.
- (2) Agree upon relevant base rates for use whenever these are available and reasonably valid.
- (3) Look for ways to divide “bias-free” concerns into multiple discrete concerns. As an example, pedestrian stops of young males in a particular neighborhood, at particular times might be one concern. Another concern might be differences in citation rates among drivers on a heavily traveled arterial route. Officers and community members might nominate concerns for inquiry.
- (4) Select the most important (e.g., impact the most people, contribute most to differences in treatment of citizens, or have the most serious consequences for citizens) of these discrete concerns for in-depth inquiry and development of solutions.

In short, use a problem-solving approach for these concerns. In addition to these activities by the parties to the CA, the City Manager’s Office should:

- (5) Task a person with the responsibility for assuring processes are followed on schedule and that all parties are involved.
- (6) Supplement city and police resources with independent analytical capability.
- (7) See to the routine evaluation of solutions to these concerns to determine if they are having the desired impact.
- (8) Routinely report to the public about progress toward bias-free policing, including the problem-solving efforts that have been applied.

BODY WORN CAMERAS AND MOBILE RECORDINGS

I. Discussion

The City's report on the evaluation of body worn cameras (BWC) and mobile video/digital video recordings (MVR/DVR) provided an overview of the planning and procedural steps taken to implement these two programs which are intended to improve organizational accountability and transparency. The documents provided included the policies and procedures developed by CPD to ensure (1) officers understand and adhere to the guidelines governing usage of this equipment, (2) supervisors review specific incidents that are recorded, ensure officers properly maintain their equipment, and evaluate compliance and training needs, and (3) proper guidelines are established and followed relative to records maintenance responsibilities.

Other than the two above-referenced procedures that were submitted (12.540 governing the Body Worn Camera System and 12.537 which addresses the Mobile Video/Digital Video Recording Equipment), along with a sample format used to document BWC investigations, and CPD's Standard Operating Procedure (1.290) for processing body worn camera video requests, no other documents, materials or data were provided to the us which might help in evaluating the achievements or impact of these accountability measures. There were several other procedures referenced in the documents which, based on their titles and apparent content, would appear to be relevant to this review. Unfortunately, these were not included in the materials provided and, thus, their objectives and bearing on the BWC and MVR/DVR programs could not be assessed.

We found the established written procedures are comprehensive in terms of covering how BWCs and MVR/DVRs are to be used and maintained. Additionally, the BWC procedure is thorough in its coverage and treatment of key elements relating to organizational requirements for capturing video evidence by officers, the protection and maintenance of evidence, access (both internal and public access) to files, and various privacy concerns and protections that are associated with this technology.

These documents thoroughly address supervisory and managerial responsibilities for ensuring procedural compliance is achieved by those who use this equipment. However, they do not establish expectations relating to supervisory or managerial responsibilities for evaluating policy compliance and outcomes or for identifying and addressing problematic trends or patterns that might arise. The overview and supporting documents lacked data or discussion concerning performance related criteria which could be used to assess program impact and intended outcomes. Identifying meaningful goals and appropriate metrics by which progress can be evaluated would serve to clarify and reinforce the desired outcomes and benefits which CPD wants to achieve. Currently, other than efforts to ensure employees comply with the various procedural requirements that are identified in the BWC and MVR/DVR protocols, there appears to be a lack of criteria for supervisors and managers to use when conducting reviews of individual incidents or when examining data for evidence of possible trends or patterns that might reflect a need for further employee training or other corrective actions.

The procedures also do not identify whether and with whom the responsibilities rest for evaluating or auditing these programs. Coupled with the lack of performance data and clear

criteria for evaluating whether organizational and community expectations are being met, there does not appear to be any effort to determine whether the intended outcomes or program objectives are being realized.

The BWC program was fully implemented in patrol as of December 2016, but is still evolving with policies and procedures being updated based on CPD experiences as well as lessons learned based on input from other agencies that are also engaged in the implementation of this technology. The MVR/DVR program has been in place for a much longer period of time but CPD noted this procedure is also in need of updating. Some concerns and obstacles have been identified that require further attention, such as problems associated with the video redaction processes, the perceived need for additional staffing for the Video Redaction Team, and the need to improve processes associated with documenting and ensuring follow up takes place on findings stemming from the reviews conducted.

II. Recommendations

- A. Establish specific objectives and outcomes (results) sought for both the BWC and MVR/DVR programs.
- B. Develop and track performance metrics (quantitative and qualitative) that are directly related to those outcomes and specify where the responsibility rests for tracking and reporting of progress towards achieving those outcomes.
- C. Incorporate in these policies and procedures supervisory and managerial responsibilities for compiling and analyzing data, as well as identifying potential trends or systemic deficiencies and ensuring timely corrective action is undertaken.

RISK MANAGEMENT SYSTEM

I. Discussion

Procedure 16.111, Employee Tracking Solution (ETS), was the only supplemental documentation provided to us concerning the Risk Management System (RMS) and the Early Intervention Process. This policy and procedure references related materials, such as the original requirements of the MOA between CPD and USDOJ, the employee tracking protocol and Procedure 19.145 (Employee Personnel Jackets). Although those supplemental documents were not provided, the City's report offered a sufficient discussion and treatment of various issues to gather an understanding of current processes used and some of the existing challenges that require attention.

The overview reflects that the primary objective of the RMS was intended to focus attention on specific "risk activities" identified as having a potential impact or bearing on employee performance. Various thresholds have been established regarding these incidents and the frequency of their occurrence that would serve to trigger attention or intervention. These thresholds help in identifying those employees who might benefit from closer supervisory attention, training or other corrective actions. The objective is to reduce or eliminate potential problems so that the individual's performance is improved and desired organizational outcomes are realized. At the same time, the ETS serves to identify and potentially acknowledge high-performing individuals.

Although the report narrative and Procedure 16.111 provide an overview of the existing system, procedures employed and identification of obstacles encountered which ought to receive attention, there was insufficient data or other evidence furnished to ascertain whether the ETS is functioning as intended. This appears to stem, at least in part, from a lack of sufficient articulation as to the desired outcomes sought and utilization of performance metrics which would assist in a more comprehensive evaluation of program results.

The following reflects some of the concerns identified by CPD, obstacles to improvement noted, and recommendations being considered:

- A. The ETS is no longer supported by the software developer or vendor and it appears CPD does not yet have a replacement identified.
- B. While relevant incidents and reports are documented in a timely fashion, there is a lack of consistency in entering this data - due to both system and human error.
- C. The system is viewed as antiquated, requiring excessive time to run queries – especially when dealing with the examination of working groups, efforts to verify patterns or trends, and in the course of disseminating results.
- D. The timeliness of the command reviews (which affects the ability to rapidly intervene with employ suitable/timely corrective measures) is impacted by the above failings. Some limited

data was provided to depict the consequences of this (a disparity of between 2 and 3-fold for those officers identified as needing “intervention” as a result of Department level hearings versus those identified through the Quarterly Review Process).

- E. There are currently no audits associated with the Quarterly Review process and the Inspections Section is supposedly developing a plan to audit interventions and their documentation. It is unknown if other audits associated with this policy have been conducted.
- F. The responsibilities for subsequent intervention and follow-up is apparently left to unit commanders but whether and how this might be tracked was unclear.
- G. Agency research has resulted in the development of several proposed additions to the list of performance indicators to be used. This list includes consideration of such things as:
 - (1) Sick leave usage and patterns.
 - (2) Absenteeism/abuse of personal leave.
 - (3) Traffic stop data/contact cards.
 - (4) Pedestrian stop data/contact cards.
 - (5) Arrest statistics (race/gender/age).
 - (6) Non-disciplinary actions (counseling/instructed ESL).
 - (7) Commendations/awards.

It appears the City and CPD are actively engaged in seeking solutions to the problems noted with the current ETS and risk management software and processes. The additional criteria under consideration for inclusion in the RMS performance indicators reflect an awareness of and willingness to consider evolving best practices. These steps display a willingness to continue to improve agency performance through the acquisition and implementation of appropriate technology, effective utilization of relevant data, and by recognizing potential warning signs and undertaking timely interventions to prevent or reduce risks.

II. Recommendation

Work units or groups are used as the basis for ensuring an accurate assessment of employee performance and determining appropriate thresholds in the ETS. This has proven to be a more reliable and objective means of evaluating potential risk factors among employees as opposed to when comparing all employees throughout an organization. However, the focus of the ETS in CPD appears to be exclusively on line level employees. Similar consideration should be given to assessing the influence of supervisors and managers on both work units as well as individual employee performance. Experience in other agencies has shown there can be a propensity on the part of some employees to engage in problematic behaviors or conduct that exposes the agency to greater risk when those employees are working for particular supervisors or managers. Incorporating factors into the RMS that examine the influence of supervision and leadership would promote improvements in those areas too.

TRAINING

I. Discussion

The materials provided by the City included the policy and procedures governing the Field Training Officer (FTO) Program (13.100) and the Handling of Mentally Ill Individuals (12.110), along with examples of recent annual in-service training agendas. As we found with the other policies reviewed, additional materials are referenced in these documents that are related and potentially might influence our findings or recommendations but they were not included for our review. Neither was the actual content of the in-service training curriculum included so that could not be fully assessed either.

The report narrative touched on but did not provide a detailed view, with supporting data included, of the primary issues we were asked to address: the adequacy of scenario-based Use of Force training, selection and assessment of FTOs, and response to individuals with mental health issues, or the Mental Health Response Team (MHRT).

The City's report indicates that scenario based training is extensively used in both recruit training as well as in-service and firearms training, with tactical exercises and simulation training being employed. Although we have prior experience with and knowledge of CPD's training practices in this area, and previously found those training programs and practices to be of high quality, the inability to review specific current practices and examples impedes our ability to adequately assess what is presently being done. Although specific curriculum was not included for review, the materials that were submitted did provide evidence that scenario based exercises are being used for both recruit and in-service training, especially as it relates to the need to maintain perishable skills (such as firearms, use of force training and field tactics). We also noted that classroom discussions deal with de-escalation techniques. Those techniques can (and should) be routinely applied and evaluated in the course of conducting scenario-based training.

Training staff also cited training they have received elsewhere ("Fair and Impartial Policing") and which they are now incorporating into new in-service training, as well as various efforts they have undertaken to seek outside expertise (Xavier University, University of Cincinnati, FBI Academy, etc.) and resources to help further CPD's training objectives and policy improvements.

The FTO Program is based on the "San Jose" model, which is widely acknowledged as being quite successful in ensuring probationary police officers are well trained and supervised. The selection of FTO's involves a process of being nominated for consideration by supervisors, screening criteria that are identified in Procedure 13.100, a review conducted by the FTO Review Board and the Training Section Commander, and final approval by the Police Chief. This selection process is thorough and indicates there is a commitment to maintaining high standards at all levels of the organization.

Cincinnati's MHRT program was originally established as a result of the MOA and is widely viewed as one of the most effective and comprehensive programs in the country. All probationary police officers now receive 40 hours of initial MHRT training and there are

currently over 300 officers who are trained and serving as primary responders on mental health calls. Refresher training is provided every 3 years. The emphasis has been placed on recognizing individuals who are in crisis or those requiring other mental health services, deploying trained personnel to deal with these situations, and utilizing de-escalation techniques when engaged with those who are crisis.

This program has benefitted from strong administrative support, good management oversight and the ongoing engagement of other agencies and service providers. The procedures guiding the program, which reflect best practices in the policing community, were developed in concert with stakeholders from throughout the community who are directly engaged in dealing with those individuals the program is intended to serve.

II. Recommendations

No recommendations were provided in the City's report other than completing a review that is currently underway related to Procedure 13.100 (FTO Program). That review should be concluded.

Our review did not reveal examples of or any evidence that particular criteria or performance metrics have been developed or applied to evaluate these training endeavors. Police organizations have a wealth of such data and information available to them which could be used to assess performance and identify opportunities for improvement. Consideration should be given to examining such things as data and trends associated with use of force incidents, tracking the use and results of applying de-escalation techniques, success/failure rates of PPOs under individual FTOs and the respective phases of the training, etc. The possibilities and range of information or data that can be applied are virtually limitless.

CITIZEN COMPLAINT AUTHORITY

I. Overview

The Cincinnati Civilian Complaint Authority's (CCA) Bias-free Policing and Officer Accountability self-evaluation report addressed the following issues:

- Complaint and investigative procedures.
- Communication with the public.
- Pattern review and process for recommending policy reforms.
- Use of problem solving to reduce identified patterns of complaint or abuses.

As noted in its review, the CCA was created in 2002 as a result of the CA and the CPD/Department of Justice MOA. CCA investigative procedures are authorized and set forth in the Cincinnati Administrative Code ("CAC") Article XXVIII. The CAC Article XXVIII is taken verbatim from CA Section E paragraphs 55 – 86. The CCA has also provided additional complaint intake and investigatory procedure details in Appendix P to its internal review that focus on how a complaint is filed, assigned and reviewed by CCA staff, and ultimately adjudicated by the CCA Board and City Manager.

The CCA's authority under CAC Article XXVIII Section 4 – Prevention ("Section 4") states:

There are two methods used for reducing citizen complaints: (i) through investigation of officers charged with misconduct, and (ii) examination of complaint patterns to identify at-risk officers, citizens and circumstances. The former represents the traditional method of complaint prevention. The latter method involves an examination both of circumstances that lead to complaints and opportunities to alter those circumstances. It is a problem-solving approach that may prove effective in Cincinnati.

Section 4 is the most effective CCA tool available to the Collaborative Parties to enhance bias-free policing and officer accountability in Cincinnati. This Progress Report section focuses on how the CCA can better use examination of complaint patterns and address those patterns through a problem solving approach to impact bias-free policing and officer accountability.

II. Unique Role of the CCA

The CCA was born out of the CA process with the mission:
". . .to investigate serious interventions by police officers, including but not limited to shots fired, deaths in custody and major uses of force, and to review and resolve all citizen complaints in a fair and efficient manner. It is essential that the CCA uniformly be perceived as fair and impartial, and not a vehicle for any individuals or groups to promote their own agendas.

It is also essential that the CCA be encouraged to act independently consistent with its duties.”

The CCA is uniquely situated to enhance bias-free policing and officer accountability based on the following:

- As a creature of the CA the CCA is vested with an obligation and the authority to foster the CA value/principle “The overall collaborative effort suggests an alternative to blame: that different groups within the community with different experiences and perspectives share much more in common and can work together on common goals and solve problems together.”
- The CCA’s mission and statutory responsibilities require it to proceed with fairness, impartiality and independence, attributes that are particularly important in addressing the challenging and often emotionally charged issues of bias and officer accountability.
- The Collaborative Agreement Plan (“Plan”) established by the Parties as a guide to insure the ongoing efforts of improving police-community relations as envisioned by the CA, calls for the Parties to, “Assess if there is a bias in pedestrian and traffic stops, including treatment of drivers and passengers during traffic stops” and gives the Manager’s Advisory Group (“MAG”) significant responsibility to conduct these assessments. The Plan specifically lists CCA reports among the topics to be discussed during MAG meetings.
- As the entity to which all citizens can direct serious interventions by police, the CCA is in a unique position to investigate, compile and analyze data on a large number of police actions that may be impacting the fair and equitable delivery of police services in Cincinnati.

The CCA has the imprimatur, responsibility and authority to play a significant role in assessing Cincinnati’s progress toward addressing bias-free policing and officer accountability.

III. Communication with the Public

The CCA’s self-evaluation report documented 20 Community Council meetings and 15 programs, events or trainings where it gave presentations or was in attendance in 2016. The CCA has clearly demonstrated its accessibility to the public and willingness to provide data and expertise related to its important mission. However, the nature of the presentations and input provided at meetings, events and trainings wasn’t described. These engagements can provide the CCA with opportunities to foster CA goals, and demonstrate the ongoing implementation of problem-solving in Cincinnati. Later in this section we address how the CCA can increase its use of examination of complaint patterns and problem-solving to reduce citizen complaints.

IV. The CCA’s Pattern Review and Process for Recommending Policy Reforms

The CA provides:

The CCA will examine complaint patterns that might provide opportunities for CPD and community to reduce complaints. At a minimum, the CCA will look for three types of patterns: (i) repeat officers, (ii) repeat citizen complaints, and (iii) repeat complaint circumstances. Following the identification of such patterns, the CCA and the CPD will jointly undertake a problem-solving project to determine the reasons for the pattern and whether there are opportunities to eliminate or reduce root causes. Where feasible, this project should involve both affected officers and the community.

This CA provision is codified in Section 4.

It is through complaint patterns identification, review, and examination that the CCA can make its greatest contribution to the Collaborative Parties assessment whether there is bias in pedestrian and traffic stops and treatment of drivers and passengers during traffic stops in Cincinnati, and what actions can be taken to address root causes. It possesses a clear mandate to identify and examine patterns, and engage in problem solving in relation to officer conduct. The CCA internal review states that it “continues to review complaint patterns and research ways to address the root causes of complaints.” It also references “Pattern Reports” that review repeat officer, repeat citizen complainants, and repeat complaint circumstances, and “makes recommendations to CPD regarding the appropriate corrective actions to take reference the officers identified with an excessive number of complaints.” The CCA has established the following criteria to identify possible patterns:

- 1) Any officer with complaints from at least ten (10) complainants over a three (3) year period.
- 2) Any citizen who filed more than three (3) complaints during the same period.
- 3) Repeat complaint circumstances during the same period.

Further, the internal review states “. . . CCA requests CPD provide them with a summary of any mitigating or corrective measures taken, and the opportunity to proactively discuss problem-solving as CPD reviews pattern officers, pattern citizens and pattern circumstances.” The CCA’s 2016 Annual Report states it completed the investigation of 61 complaints and made 15 recommendations to CPD.

The number and subject matter of CCA Problem Reports conducted since 2012, the beginning of the five-year period analyzed in the most recent CCA Annual Report, isn’t provided. However, the CCA 2016 Annual Report Five-Year Statistics contain data that create opportunities for the CCA to conduct examinations of complaint patterns that can result in reduction in citizen complaints, and problem-solving projects with CPD and the community that can have a direct bearing on bias-free policing and officer accountability. For example, the number of CCA complaints rose from 55 in 2015 to 85 in 2016 and allegations rose from 177 to 301. Also, the CCA compiles and compares annual and five-year statistics that include: total number of complaints, types of complaints including discourtesy, discrimination, harassment, stops and use

of force; complaints by complainants' gender, race and ethnicity, and complaints by officers' gender, race and ethnicity.

At this point there is no way to determine what complaint pattern examinations, if any, were conducted for the past five years, and if any related to bias-free policing or officer accountability. We do know that the concerns of biased policing and officer accountability were at the forefront of the issues that led to the creation of the CA. Paragraph 50 of the CA states, "The City shall provide police services in a fair and impartial manner without any discrimination on the basis of race, color, or ethnicity." Further, CA paragraph 54 states, "In providing police services, the members of CPD shall conduct themselves in a professional, courteous manner, consistent with professional standards. . ." These issues are clearly at the heart of the CA and the CCA's Mission, and Section 4 urges it to address them.

There are plentiful statistics available to the CCA to examine patterns related to bias-free policing and officer accountability that appear to have gone unmined. The CCA's internal review and Appendix P, "How is a complaint filed" describe in detail the ". . . thorough investigation of officers charged with misconduct . . ." However, no similar process for triggering and conducting a pattern examination is provided. How the CCA can initiate and effectively use its pattern examination authority to address bias-free policing and officer accountability will be discussed in the recommendations that follow.

V. Use of Problem Solving to Reduce Identified Patterns of Complaints or Abuses

Just as in the *Pattern Review and Process for Recommending Policy Reforms* section of the CCA self-evaluation, no information on its use of problem-solving to reduce identified patterns of complaints or abuses is presented. The internal review states, "CCA problem solves through orchestrating and participating in discussion with CPD regarding potential root causes." It also listed ten topics of discussion it has engaged in with CPD during the past year regarding policies and procedures, research and review of patterns. There is no evidence these discussions resulted in any problem solving activity.

VI. Recommendations

- a) The city creates a complaint pattern detection team to look for ways to prevent events that lead to complaints. The team should have at least one representative of the CCA, member of the police department, and member of the public. It should be assigned an analyst from the CPD or city. It should also have easy access to a legal expert, presumably from the Law Department.
- b) The primary mission of the team is prevention through identification of complaint patterns and creation of interventions to make systematic changes. Once important patterns are detected, an *ad hoc* problem-solving task force can be created to examine it in-depth and make recommendations for changes. It is envisioned that some of the pattern detection would come from data analysis, but the complaint pattern detection team should also look into other sources. For example, police officers or members of the public might nominate problematic circumstances for examination. The composition of

the complaint pattern team and *ad hoc* problem-solving task force is consistent with the Section 4 advice that, where feasible, problem-solving projects should involve both affected officers and the community. Once a problem-solving task force has addressed its target problem it disbands.

- c) It is not primarily for investigations of misconduct. If it detects overlooked misconduct, this information should be conveyed to the CAA and/or police internal affairs. In short, it is not focused on who should be held accountable. Rather, it is focused on how to keep officers and members of the public safe and secure.
- d) Unfounded allegations are just as important as founded allegations for prevention purposes.
- e) The team should combine data from multiple sources, when this is possible and useful. For example, complaint data from CCA could be joined to incident report and calls for service data from the CPD to provide a richer description of circumstances around complaints. Complaint and allegation patterns should be checked against patterns of police activity to determine if particular policing tactics and strategies produce more complaints than others.
- f) The team and its task forces should go beyond the quantitative data and carry out interviews with members of the public and police officers. The task forces should make observations of places where complaints are common.
- g) The team and its task forces should make inquiries of other police agencies, other complaint authorities, and other organizations to determine how they handle particular circumstances.
- h) Recommendations for changes should not be restricted to the police department. Some recommendations might require changes in police training or operational polices, but the team should not overlook changes needed by other institutions. If, for example, hospital emergency room areas are a recurrent setting for complaints, and if the team supposes that alterations in emergency room procedures might help, then after discussion with the relevant hospital personnel, such alterations should be suggested.
- i) The CCA, with the assistance of a data analyst, should conduct assessments of the utility of recommendations.
- j) Request information from the National Association for Civilian Oversight of Law Enforcement about the use of problem-solving and prevention efforts undertaken by its members.