



# Item Overview

Business Meeting– 10/10/2016  
 Agenda # 11

**Subject:** Updates on Efforts to Reduce Bias in Policing

**Staff:**  
 Christopher C. Blue, Chief of Police

**Department:**  
 Police Department

**Overview:** At the June 22, 2015 Business Meeting, Council received a petition from the Orange County Bias-Free Policing Coalition containing a number of recommendations for policing reforms. Council received and referred the petition to the Community Policing Advisory and Justice in Action Committees. Staff has worked with both committees to provide information to inform their responses, which are attached.



**Recommendations**

That the Council:

1. Receive the reports from the Justice in Action and Community Policing Advisory Committees;
2. Receive updates from the Town Manager and Police Department and offer feedback on efforts to date; and
3. Adopt the resolution in support of proposed efforts to address bias in policing.

**Decision Points**

- To adopt a resolution to continue the following efforts to address bias in policing:
  1. Proceed with participation in the President’s Open Data Initiative
  2. Develop a plan to cite or warn for low-level marijuana offenses
  3. Continue the annual mandatory fair and impartial policing training
  4. Develop a plan to de-emphasize regulatory stops/warning tickets
  5. Develop a quarterly report of our progress in the above-referenced areas for submission to Council.

**Fiscal Impact/Resources:** There are no immediate fiscal impacts.

**Council Goals:**

<input type="checkbox"/>		Create a Place for Everyone	<input type="checkbox"/>		Develop Good Places, New Spaces
<input type="checkbox"/>		Support Community Prosperity	<input checked="" type="checkbox"/>		Nurture Our Community
<input type="checkbox"/>		Facilitate Getting Around	<input type="checkbox"/>		Grow Town and Gown Collaboration



**Attachments:**

- Resolution
- Petition from the Orange County Bias-Free Policing Coalition
- Justice in Action Memorandum to Council
- Community Policing Advisory Committee Memorandum to Council

**A RESOLUTION TO CONTINUE EFFORTS TO ADDRESS THE POTENTIAL FOR BIAS IN POLICING (2016-10-10/R-10)**

WHEREAS, at the June 22, 2015 Business Meeting, Council received a petition from the Orange County Bias-Free Policing Coalition containing a number of recommendations for policing reforms; and

WHEREAS, Council received and referred the petition to the Community Policing Advisory and Justice in Action Committees; and

WHEREAS, staff has worked with both committees to provide information to inform their responses.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council authorizes the Town Manager to work with the Police Chief and Town Attorney to:

1. Proceed with participation in the President's Open Data Initiative
2. Develop a plan to cite or warn for low-level marijuana offenses
3. Continue the annual mandatory fair and impartial policing training
4. Develop a plan to de-emphasize regulatory stops/warning tickets
5. Develop a quarterly report of our progress in the above-referenced areas for submission to Council

This the 10th day of October, 2016.

May 18, 2015

✓ The Honorable Mark Kleinschmidt  
Mayor, Town of Chapel Hill  
Town Hall, Second Floor  
405 Martin Luther King Jr. Blvd.  
Chapel Hill, N.C. 27514

Chapel Hill Town Council Members  
Town Hall, Second Floor  
405 Martin Luther King Jr. Blvd.  
Chapel Hill, N.C. 27514

Chief Chris Blue  
Police Chief, Town of Chapel Hill  
828 Martin Luther King Jr. Blvd.  
Chapel Hill, N.C. 27514

Board of Aldermen, Town of Carrboro  
301 W. Main Street  
Carrboro, N.C. 27510

The Honorable Lydia Lavelle  
Mayor, Town of Carrboro  
301 W. Main Street  
Carrboro, N.C. 27510

Chief Walter Horton  
Police Chief, Town of Carrboro  
100 N. Greensboro Street  
Carrboro, N.C. 27510

The Honorable Charles S. Blackwood  
Sheriff, Orange County  
106 E. Margaret Lane  
Hillsborough, N.C. 27278

Orange County Board of Commissioners  
200 S. Cameron Street  
Hillsborough, N.C. 27278

Re: Policing Reform Recommendations

Dear Ladies and Gentlemen:

We, the members of the Orange County Bias-Free Policing Coalition, respectfully submit for your consideration the attached report and recommendations for policing reform in our local law enforcement agencies. Our coalition represents concerned citizens and numerous citizen groups, including the town of Chapel Hill Justice in Action Committee; the Chapel Hill-Carrboro NAACP; Organizing Against Racism NC; the Jackson Center for Saving and Making History; the Southern Coalition for Social Justice; and the North Carolina Public Defender Association Commission on Racial Equity. Our coalition formed with a goal of bringing research and analysis to questions regarding the most effective reforms for ensuring improved relations between members of our community and our local law enforcement agencies.

As you know, recent events in Ferguson, Staten Island, Oakland, Baltimore and elsewhere have catalyzed discussion regarding policing behavior and needed reform. In *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, a seminal work now being studied across the nation, Michelle Alexander employs research and analysis to support the theory that the US criminal justice system functions as a contemporary system of racial control, relegating millions to second-class status. There is no reason to expect that our police departments would be immune to racial bias in policing and in fact, recent forums on policing in Chapel Hill, Carrboro, and Orange County have reinforced data that documents disproportionate minority contact in local traffic stops and searches. In these forums, suggestions have been offered for reform. We know that our local law enforcement agencies are considering policies and other measures to reduce racial bias in their work. We hope our report will encourage reforms already under

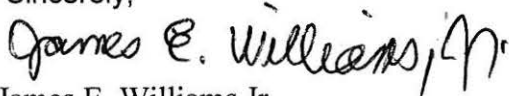
consideration, prompt serious discussion of reforms not currently under consideration and, perhaps most importantly, encourage citizen participation in police policy making with the goals of reducing the many negative effects of biased policing and restoring trust between the police and our community.

We don't intend or recommend that you simply adopt all our recommendations forthwith. Instead, we hope and expect that these recommendations will encourage a serious and in-depth public discussion of our problems and how to take meaningful steps to solve them. Many other cities and towns are having similar discussions, some after tragic events we hope to avoid in Chapel Hill, Carrboro and Orange County. We are sure there are additional reforms that should be considered and hope there will be an opportunity for consideration of all such measures. The members of the committee are willing to help as you determine a process for discussing, accepting or rejecting, implementing and finally, evaluating any new steps undertaken. Given the critical nature of the problem, we trust that you will respond to these recommendations as soon as possible. We respectfully request that you respond by July 2nd if at all possible.

Thank you for your consideration of our report and thanks always to our local law enforcement agencies for the critically important and difficult role they play. If you have questions or need additional information please contact either:

1. James E. Williams, Jr. at (919) 643-4400 or [James.E.Williams@nccourts.org](mailto:James.E.Williams@nccourts.org);
2. Malcolm "Tye" Hunter at (919) 929-9655 or [TyeHunter@yahoo.com](mailto:TyeHunter@yahoo.com); or
3. William Hendrick at [douglaswilliamhendrick@gmail.com](mailto:douglaswilliamhendrick@gmail.com).

Sincerely,



James E. Williams Jr.

George Barrett

Frank Baumgartner

Robert Campbell

Keith Cook

Mike Fliss

Jesse Gibson

Will Hendrick

Tye Hunter

Ian Mance

Stephanie Perry

Richard A. Rosen

Doreen Stein-Seroussi

For the Orange County Bias Free Policing Coalition

## **Orange County Bias Free Policing Coalition**

### **Policing Reform Recommendations**

#### **Summary**

Racial profiling of minority members of the community by local law enforcement agencies is a problem in the United States, North Carolina and Orange County. Such policing results in mistrust between minority communities and the police, and undermines police legitimacy in the community.

Black and Hispanic motorists are disproportionately stopped by Chapel Hill, Carrboro, and Orange County law enforcement agencies. Further, once cars are stopped, the police are more likely to search cars with Hispanic or black drivers than cars with white drivers.

All studies show that marijuana use is no greater among the black population than among whites. Yet, in Chapel Hill, Carrboro, and Orange County, arrests for marijuana possession are grossly disparate by race.

Other jurisdictions including North Carolina cities such as Charlotte, Durham, Greensboro and Fayetteville, have adopted policies to combat racially biased policing. Both Carrboro and Chapel Hill Police Departments have adopted some policies and are considering others.

Following are eleven proposals designed to mitigate racially biased policing in Orange County.

1. Identify existing policies that result in disproportionate policing and change those policies to mitigate the impact of race.
2. Adopt written policies explicitly prohibiting racial profiling.
3. Conduct periodic review of law enforcement officers' stop, search and arrest data.
4. Require mandatory use of written consent-to-search forms.
5. Prohibit vehicle stops and requests to search based solely on a subject's "nervousness," "presence in a high crime neighborhood," or "criminal record."
6. Require dashboard cameras in police cars and body cameras for officers.
7. Designate marijuana a low law enforcement priority.
8. Mandate quarterly race reports to Council/Commission.
9. Mandate racial equity training for all officers.
10. Adopt measures to increase public confidence in official police response to police misconduct allegations.
11. Increase civilian involvement in police decision-making.

## **I. Introduction**

Recent events stretching from Ferguson, Missouri, to Cleveland, Ohio, to Staten Island, New York, and to North Charleston, South Carolina, have reminded us that no place in our country is immune from the harm caused by antagonistic relationships between communities of color and law enforcement. Much of the resentment minorities have towards the police arises from the practice of disproportionately stopping and searching people of color on the roads and in the streets, also known as “racial profiling.” The prevalence of racial profiling has been acknowledged and condemned by people across the political spectrum, including the United States Attorney General and the Director of the Federal Bureau of Investigation. A recent analysis of data submitted by law enforcement officers regarding vehicle stops and searches showed that profiling occurs throughout North Carolina, and specifically in Carrboro, Chapel Hill, and Orange County. Such policing results in deep mistrust between minority community members and the police and undermines legitimacy. Law enforcement agencies and governing bodies across the state have begun to respond to this problem by enacting various reforms. With this statement, the Orange County Bias Free Policing Coalition calls on law enforcement and legislative bodies in our community to take affirmative steps to ensure a more racially equitable system of justice.

The Orange Bias Free Policing Coalition is comprised of a diverse and representative group of Orange County residents committed to ensuring racially equitable and fair policing in Orange County. We formed in response to concerns expressed by residents at various policing forums in Chapel Hill and Carrboro. Organizations such as the Chapel Hill- Carrboro NAACP, the Jackson Center, the Hank Anderson Breakfast Club, the Justice in Action Committee of the Town of Chapel Hill, the Southern Coalition for Social Justice and the N.C. Public Defender Association Committee On Racial Equity have members who are a part of this coalition. Our first meeting was in November of 2014 and we have been meeting regularly since that time.

## **II. Definitions of Key Terms**

### **A. Racial Profiling**

The term “racial profiling” typically refers to law enforcement’s illegitimate use of race or ethnicity as a factor in deciding whether to stop, detain, question, or engage in an enforcement action against an individual. Racial profiling, in a broader sense, encompasses the routine use of broad generalizations about race as a factor, in combination with other factors, in causing an officer to react with suspicion where he or she otherwise would not.

### **B. Implicit Bias**

The term “implicit bias” refers to attitudes or stereotypes that affect a person’s understanding, actions and decisions in an unconscious manner. These biases encompass both favorable and unfavorable assessments, and are activated involuntarily without an individual’s awareness or intentional control.

### **C. Institutional Bias**

The term “institutional bias” refers to the employment of policies and procedures which, absent a compelling law enforcement rationale, produce racially disproportionate results. Examples include decisions to employ undercover narcotics officers’ disproportionately in minority and poor communities or to set up check-points in such communities, as well as the adoption of policies requiring strict enforcement of minor offenses which are most likely to be committed by poor and minority individuals.

### **III .Orange County Law Enforcement Agencies Own Data Indicate Clear Racial Disparities That Adversely Affect African-Americans and Hispanics**

According to analyses of data collected statewide<sup>1</sup>, race remains a significant predictor of whether an individual is likely to be stopped and searched in the course of a traffic stop in North Carolina. Orange County is not immune from these disparities. All three law enforcement agencies in the county stopped African-American drivers at a rate that is more than twice their representation in the population. Black people make up 10% of the population of Carrboro but 22% of individuals stopped by the Carrboro Police Dept.; 10% of the Chapel Hill population but 24% of stops by the Chapel Hill Police Dept.; and 12% of the rural Orange County population but 26% of stops by Sheriff’s Dept. Moreover, the statistics showed that officers are more likely to search cars with black drivers than those with white drivers in each of these jurisdictions. In Carrboro, 12% of all black motorists stopped by the police are searched, compared to 3.6% of whites. In Chapel Hill and more broadly in Orange County, black drivers are more than 100% more likely to be searched than white ones. UNC’s analysis of search rates state wide showed that Chapel Hill and Carrboro had higher disparities than all but a small number of North Carolina police agencies and were well above the state-wide average. The data also revealed significant racial disparities concerning consent searches—searches in which the officer lacks reasonable suspicion or probable cause that the person stopped has contraband, but nevertheless requests permission to search the vehicle. In Carrboro, 5.5% of black drivers stopped are subject to consent searches, compared to 1.2% of white drivers. In Chapel Hill, the numbers are 1.9% for black drivers, 0.6% for white; in Orange County, 4.8% for black drivers, and 2.5% for white. Overall, officers found contraband on a greater percentage of the white drivers they searched (21%) compared with the black drivers (18%), according to data collected over more than a decade by the Orange County Sheriff’s Department. Lower contraband hit rates suggest less probable cause in these stops.

Similarly, the statistics show that in each Orange County jurisdiction, officers are far more likely to search cars with Hispanic drivers than those with white drivers. In Carrboro, 12.7% of all Hispanic motorists stopped by the police are searched, compared to 3.6% of whites. In Chapel Hill, Hispanic drivers are more than 100% more likely to be searched than white ones (5.7% of Hispanics stopped are searched, compared to 2.5% of whites). The Orange County Sheriff’s Office has the largest search disparities in that OCSO officers searched 21.3% of Hispanic motorists they stopped, compared to 4.6% of white motorists stopped. The data also showed

<sup>1</sup> Data maintained pursuant to N.C.G.S. § 143B-903, and analyzed by Dr. Frank Baumgartner of UNC-Chapel Hill and the Southern Coalition for Social Justice

disparities concerning consent searches of Hispanic drivers. In Carrboro, 5.9% of Hispanic drivers stopped are subject to consent searches, compared to 1.2% of white drivers. In Chapel Hill, 1.6% of Hispanic drivers are consent searched, compared to 0.6% of white drivers. The Orange County Sheriff's Office conducted consent searches on 7.5% of Hispanic drivers stopped, compared to 2.5% of white drivers. Overall, Hispanic drivers were less likely than white drivers to be found with contraband following searches. In Carrboro, 15.9% of Hispanics had contraband, compared to 28.1% of whites. In Chapel Hill, 14.5% of Hispanics had contraband, compared to 28.2% of whites. In Orange County, 5.7% of Hispanics had contraband, compared to 23.5% of whites.

#### **IV. Policies Have Been Adopted by Other North Carolina Jurisdictions to Combat Racially Biased Policing**

In recognition of similar troubling disparities, a number of municipalities around the state have recently adopted policies and procedures designed to mitigate the likelihood that police officers will improperly consider race when engaging in enforcement actions. Fayetteville (2012) and Durham (2014) passed policies mandating the use of written consent-to-search forms prior to any search for evidence or contraband that is not based on probable cause, and prior to any search for weapons that is not based on reasonable suspicion. See Richard A. Oppel Jr., *Wielding Search Data to Change Police Policy*, THE NEW YORK TIMES, A1, November 21, 2014. Charlotte and Durham took steps to strengthen civilian oversight of the police. Charlotte, Durham and Greensboro adopted new training protocols with respect to racial bias. Fayetteville enacted a policy prohibiting officers from requesting consent to search where suspicion of criminal activity is based solely on the stopped party's "nervousness" or "presence in a high crime neighborhood." Durham has instituted periodic reviews of all officer stop, search, and arrest data for unexplainable racial disparities. Chief Blue of the Chapel Hill Police Department has also implemented such a policy. Each of these policy changes represents an affirmative step to ensure a more racially equitable system of justice and should receive serious consideration in Orange County.

#### **V. Recommended Policies for Orange County**

Following are eleven proposals designed to mitigate racial profiling in Orange County and to provide the impetus for better communication and trust between racial and ethnic minorities and law enforcement in Orange County.

##### **1. Adopt Policies Limiting the Impact of Institutional Bias**

Each law enforcement agency and legislative authority in Orange County should seek to identify policies which lead to law enforcement disproportionately and unfairly targeting people of color, and should adopt policies designed to mitigate the impact of institutional bias, as defined above.

##### **2. Adopt Policies Prohibiting Racial Profiling**



Each law enforcement agency and legislative authority in Orange County should adopt written policies banning racial profiling, as defined above, and should provide for explicit consequences for violating such policies.

### **3. Conduct Periodic Reviews of Officers' Stop, Search, and Arrest Data**

All law enforcement agencies in Orange County regularly collect and report traffic stop data, as required by law under N.C.G.S. § 143B-903 (formerly codified at § 114-10.01). Using these data, police chiefs, sheriffs, and agency administrators can evaluate the enforcement activities of the officers under their command. On a properly configured computer, a police chief or sheriff can, with a few clicks of a button, identify those officers generating the largest racial enforcement disparities and compare their enforcement patterns to those of similarly assigned officers. However, until Chapel Hill started doing so a year or so ago, no agency in Orange County regularly reviewed or analyzed the data.

Advocates in neighboring jurisdictions have already used traffic stop data to bring specific officer profiles to the attention of command staff. In some cases, the information discovered resulted in officer discipline and training. Police agencies have all of the tools necessary to conduct reviews, however, and should not rely on citizens to identify concerns. Carrboro Police Chief Horton set a positive example with his recent decision to invite a statistician and technician from the Southern Coalition for Social Justice to visit his department to demonstrate for his staff how to access and analyze traffic stop data. This Coalition recommends that each agency in Orange County adopt a policy requiring a member of the department's command staff to review officer stop, search, and arrest data on a quarterly basis, with a specific eye towards identifying racial disparities in officer enforcement patterns.

### **4. Require the Mandatory Use of Written Consent-to-Search Forms**

In light of racial disparities surrounding consent searches, all Orange County law enforcement agencies should adopt a policy requiring officers to obtain a signed, written affirmation of the motorist, delineating the scope of the search to be undertaken, prior to any consent searches of vehicles. Mandatory written consent is a policy that exists in various departments across the state and country, and it represents a modest, common sense, low cost policy change that can be implemented without much difficulty to the department. *See, e.g.*, City of Fayetteville, Consent to Search Form, POL-572 (Rev. 3/2012); City of Durham, Consent to Search Policy (Rev. 10/2014).

Requests to search are primarily directed at people stopped for run-of-the-mill traffic infractions in situations where officers lack probable cause to believe a crime has been committed or reasonable suspicion to believe that the driver is armed. Nevertheless, many drivers are unaware they have the legal right to say "no," mistaking a request to search for a mere nicety. Other drivers feel genuinely intimidated, particularly when the request is accompanied by a show of

force or an implicit threat of force.<sup>2</sup> According to UCLA law professor Devon Carbado, racial dynamics play a significant role in consent searches:

[B]ecause of racial stereotypes there is greater pressure for blacks to say yes to consent searches than there is for whites. Consenting to a search may be the only way a black person can demonstrate his innocence, particularly if the black person is young, male, “unprofessionally” dressed, and in a high crime (read: black neighborhood) or predominantly white (read: low crime) area. Thus, assuming that consent searches are a means by which any person can establish his innocence, the extent to which one perceives the need to do this—that is, to give up privacy to prove innocence—is a function of race.<sup>3</sup>

In some instances, drivers assert that they did not give consent to search where police officers report having obtained consent verbally. A written consent to search form would provide documentary evidence to assist the finder of fact. In addition to promoting transparency, the adoption of a mandatory written consent-to-search policy would promote trust between people and the police in those communities where it is most needed. As one scholar observed:

[E]mpirical research supports the view that people do not evaluate the police “by focusing primarily on either the impact of [that] institution[] on the rate of crime or other instrumental issues such as delay or cost. Instead, people base their judgments on how well the police . . . treat the public.” Police departments that adopt reforms in light of this view, which is part of the procedural justice approach, can reap the benefits of greater legitimacy and, perhaps, increased law-abiding behavior. . . . By enacting and vigorously enforcing reformist consent search policies, police departments can simultaneously fight crime and improve their relationship with the community.<sup>4</sup>

### **5. Prohibit Vehicle Stops and Requests to Search Based Solely on a Subject’s “Nervousness,” “Presence in a High Crime Neighborhood,” or “Criminal Record”**

In 2012, the Fayetteville Police Department adopted a policy stating that officers may not request consent to search an individual or vehicle without first being able to “articulate at least one reasonable factor that the driver and/or occupant(s) may be involved in criminal activity.” Further, a stopped party’s “nervousness” may not constitute the “one reasonable factor” giving rise to an officer’s request to search. *See Fayetteville PD Policy 3.5.2 (Consent Searches)*. Under a related policy, an individual’s known criminal record or presence in a high crime neighborhood can no longer be used as a legitimate basis to initiate a stop. *See Fayetteville PD Policy 9.5.3 (Vehicle Stops)*.

<sup>2</sup> As one court put it, “This Court would ill-expect *any* citizen to reject, or refuse, to cooperate when faced with the trappings of power like badges and identification cards. And these officers know that—that is one reason that they display those trappings.” *State v. Kerwick*, 512 So. 2d 347, 349 (Fla. Dist. Ct. App. 1987).

<sup>3</sup> Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 MICH. L. REV. 946, 1017 (2002).

<sup>4</sup> Steven L. Chanenson, *Get the Facts, Jack! Empirical Research and the Changing Constitutional Landscape of Consent Searches*, 71 TENN. L. REV. 399, 461–63 (2004) (internal citations omitted).

Because African Americans are disproportionately likely to have had prior contact with the criminal justice system, and because they are disproportionately likely to live in so-called “high crime” areas, allowing officers to initiate contact on the basis of such observations has the aggregate effect of lowering the threshold for reasonable suspicion for black drivers. Similarly, because of the legacy of racial discrimination and racial violence on the part of the police against the African-American community, black drivers have significantly more reason than whites to be nervous during otherwise routine police encounters.

In the absence of other factors, the character of a given neighborhood, nervousness, and past criminal history do not indicate that a person is engaging in criminal conduct. As such, police departments should implement a policy prohibiting officers from stopping or searching a vehicle based on these factors, and should require officers to provide a written explanation for searching a vehicle following a routine traffic stop. Fayetteville has operated under such a policy for a couple of years and has seen a significant drop in the African-American stop rate and search rate without a concomitant increase in the crime rate.

#### **6. Require Dashboard Cameras in Police Cars and Body Cameras for Officers, and Adopt Strict Use, Disclosure, and Data Retention Policies**

Recent developments in technology have made dashboard cameras in police cars and body cameras more accessible and cost efficient than ever before. Such cameras, in many cases, are capable of providing a clear record of police-citizen interactions and provide benefits to all parties involved. For community members concerned about police misconduct, cameras provide a means of holding officers accountable. For officers themselves, dashboard and body cameras provide a means of protection against false accusations. The use of cameras may deter police misconduct. In Rialto, CA, for example, following the decision to equip officers with body cameras, “complaints filed against officers fell by 88 percent,” and “[u]se of force by officers fell by almost 60 percent.” See Ian Lovett, *In California, a Champion for Police Cameras*, THE NEW YORK TIMES, August 21, 2013. Given the privacy interests involved, however, as well as concerns for fairness, it is necessary to enact policies to govern the use of such cameras, as well as the retention, access, and preservation of the data recorded.

In the wake of the Ferguson tragedy, President Obama proposed “a three-year \$263 million investment package . . . [to] increase use of body-worn cameras,” among other related goals. See The White House, *Fact Sheet: Strengthening Community Policing*, December 1, 2014. The program offers local police agencies 50% in matching funds for the purchase of body camera equipment, provided storage and maintenance guidelines are observed. *Id.* We believe that all three Orange County agencies should investigate this initiative as well as other potential sources of funding. Even if outside funding is not available, we believe this is an investment worth making.

#### **7. Designate Marijuana Each Agency’s Lowest Law Enforcement Priority**

In North Carolina, non-violent drug crimes were the most frequent type of crime committed by people placed on probation and sent to prison in 2011. The general racial disparities inherent in

the prosecution of the drug war nationwide are well-documented and largely undisputed. The state's African-American community is particularly hard hit by law enforcement's continued focus on low-level marijuana offenses, a conviction for which can trigger more than 100 civil penalties, imposed outside the criminal justice system and affecting an individual's ability to get a job, housing, or student loans.

All studies show that marijuana use is no greater among the black population than among whites. Yet, in Chapel Hill, where blacks make up only 10% of the population, they comprise 47% of the people arrested for possessing marijuana; in Carrboro, blacks make up 9% of the population and comprise 44% of arrests, and in rural Orange County, where the Sheriff's Department has law enforcement responsibility, blacks make up 12% of the population and comprise 27% of marijuana possession arrests.<sup>5</sup> A large number of these arrests involve young people between the ages of 15 and 24. Because North Carolina is currently the only state in the country that automatically prosecutes 16 and 17 year-olds as adults, these low-level marijuana arrests routinely become part of a permanent record that can significantly inhibit an individual's ability to obtain education and employment when they reach adulthood.

Marijuana arrests have an adverse effect on community relations and divert resources from the kind of police work that can make an appreciable difference in our neighborhoods. A number of cities around the country, including Oakland, California and Fayetteville, Arkansas, have adopted the marijuana Lowest Law Enforcement Priority (LLEP) initiative in recent years, and initial reports indicate that they are better for it.

We would also ask our elected officials to re-examine all aspects of our community's drug enforcement strategy, and in particular, to give serious consideration to the adoption of policies directing law enforcement to use citations instead of arrests for minor, non-violent misdemeanor offenses, especially drug offenses. It is only by adopting substantive pre-trial diversion programs that we can begin to turn the tide on the enormous racial disparities and injustices that have resulted from America's failed Drug War.

### **8. Mandate Quarterly Race Reports to Council/Commission, Along With Quarterly Crime Reports**

Because of the difficulty of addressing issues of structural racism, we believe the Carrboro Board of Aldermen, the Chapel Hill Town Council, and the Orange County Board of Commissioners should find a way to institutionalize their concern for the issues addressed in this letter. One simple way to do this would be to require "Race and Policing Reports," detailing the demographic breakdown of stop, search, arrest, and use-of-force statistics, to be presented to the Board, Council and Commission alongside each public quarterly crime report. This practice has already been adopted in Durham. Such reports allow county leaders, as well as community members, with an easy means of evaluating the impact of various policing initiatives on different racial and ethnic groups.

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<sup>5</sup> Statistics compiled by Mike Dolan Fliss, Epidemiology PhD student UNC-CH, and based on data from NC DOJ annual support reports, available at <http://cimereporting.ncdoj.gov/>.

## 9. Mandate Racial Equity Training for Law Enforcement Officers

In light of the statistical evidence we have assembled, as well as the litany of concerns expressed at recent public meetings, we request that all commanding and patrol officers within our local law enforcement agencies participate in formal racial equity training. This type of training will be essential if the law enforcement is ever to undergo the sort of cultural shift we would like to see. Even if none of the local Orange County agencies employ overtly racist officers on their forces, the evidence would appear to indicate that officers' enforcement patterns have at least been informed by some degree of unconscious or implicit bias and stereotyping.

The real utility of the NCAJ-Baumgartner study is its ability to compare the criminal justice outcomes of similarly situated persons of different races. At base, it asks questions like, "what is the average outcome for a white driver stopped in the city for not wearing his seat belt as compared to the average outcome for a black driver stopped for the same offense?" The ultimate conclusion reached—that traffic stop outcomes are correlated with race and ethnicity—calls out for a thoughtful and coordinated response.

It bears emphasizing that the numbers to which we have been drawing attention do not represent a mere "snapshot" of enforcement activity. Rather, they represent a comprehensive picture of policing over a fourteen year period. The sort of disparities they indicate cannot be fixed overnight. Reversing these trends will require a sustained and conscious effort on the part of our law enforcement agencies to reduce the racial disparities in criminal justice administration. The data collection statute provides a useful index by which the community can gauge, over time, the effectiveness of the department's efforts to eradicate racial disparities in policing. We therefore request that each agency provide initial and recurring training to all officers that sends a clear, consistent, and emphatic message that racially biased policing and other forms of discriminatory policing are prohibited. Training should include:

- 1) Relevant legal and ethical standards;
- 2) Information on how stereotypes and implicit bias can infect police work;
- 3) The importance of procedural justice and police legitimacy on community trust, police effectiveness, and officer safety; and
- 4) The negative impacts of profiling on public safety, town and county budgets, and crime prevention.

In addition, each agency or department should:

- 1) Provide training to supervisors and commanders on detecting and responding to biased profiling and other forms of discriminatory policing;
- 2) Include community members from groups that have expressed high levels of distrust of police in officer training; and
- 3) Take steps to eliminate all forms of workplace bias from each agency.

We are aware of several institutions that specialize in precisely the sort of training from which we feel the department could benefit. An organization at the forefront of policing reform that we

would encourage our local agencies to familiarize themselves with is the Center for Policing Equity (CPE), formerly known as the Consortium for Police Leadership in Equity. “At the core of CPE’s mission,” it explains on its website, “is a deep concern for equity and inclusiveness within the police department itself and between the police department and the community it polices. . . The goal of the CPE is to simultaneously aid police departments to realize their own equity goals as well as advance the scientific understanding of issues of equity within organizations and policing.” See Center for Policing Equity, University of California, Los Angeles, <http://cpe.psych.ucla.edu/about>. Another organization that is well respected in policing reform is Fair and Impartial Policing whose primary trainer is Dr. Lorie Fridell. <http://www.fairimpartialpolicing.com/people/>. Finally, the Racial Equity Institute (REI), based in Greensboro, NC, conducts a two day workshop on institutional and structural racism. Its workshop is specifically designed to assist individuals and organizations in developing tools to challenge existing patterns of conduct that result in racially disparate and discriminatory outcomes. REI’s training, unlike the other two, does not have a law enforcement focus.

#### **10. Adopt Measures to Increase Public Confidence in the Official Response to Allegations of Officer Misconduct**

In part, the antagonistic relationship between communities of color and law enforcement agencies stems from the perception that police agencies do not respond fairly and openly to allegations of officer misconduct made by people of color. We recommend that law enforcement and governing bodies in Orange County consider adopting the recommendations on this subject contained in the recent U.S. Department of Justice report on law enforcement practices in Ferguson, Missouri. Noting that “[r]esponding to allegations of officer misconduct is critical not only to correct officer behavior and identify policy, training, or tactical concerns, but also to build community confidence and police legitimacy,” the Department of Justice recommended that the authorities in Ferguson should:

- 1) Modify procedures and practices for accepting complaints to make it easier and less intimidating for individuals to register formal complaints about police conduct, including providing complaint forms online and in various locations throughout the City and allowing for complaints to be submitted online and by third parties or anonymously;
- 2) Require that all complaints be logged and investigated; and
- 3) Develop and implement a consistent, reliable, and fair process for investigating and responding to complaints of officer misconduct.

As part of this process, Orange County law enforcement agencies should:

- 1) Investigate all misconduct complaints, even where the complainant indicates he or she does not want the complaint investigated, or wishes to remain anonymous;
- 2) Not withdraw complaints without reaching a disposition;
- 3) Develop and implement a fair and consistent system for disciplining officers found to have committed misconduct;
- 4) Terminate officers found to have been materially untruthful in performance of their duties, including in completing reports or during internal affairs investigations;

- 5) Timely provide in writing to the Orange County District Attorney all impeachment information on officers who may testify or provide sworn reports, including findings of untruthfulness in internal affairs investigations, for disclosure to the defendant under *Brady v. Maryland*, 373 U.S. 83 (1963);
- 6) Document in a central location all misconduct complaints and investigations, including the nature of the complaint, the name of the officer, and the disposition of the investigation;
- 7) Maintain complete misconduct complaint investigative files in a central location;
- 8) Develop and implement a community-centered mediation program to resolve, as appropriate, allegations of officer misconduct;
- 9) Provide regular and specific public reports on police stop, search, arrest, ticketing, force, and community engagement activities, including particular problems and achievements, and describing the steps taken to address concerns;
- 10) Provide regular public reports on allegations of misconduct, including the nature of the complaint and its resolution; and
- 11) Make available online and regularly update a complete set of police policies.

## **11. Increase Civilian Involvement in Police Decision-Making**

In addition to engaging with all segments of Orange County as part of implementing community policing, departments should develop and implement a system that incorporates civilian input into all aspects of policing, including policy development, training, use-of-force review, and investigation of misconduct complaints.

## **Conclusion**

Trust between law enforcement agencies and the people they are sworn to protect and serve is essential in our democracy. The reforms recommended above will help build and maintain trust and legitimacy between law enforcement agencies in Orange County and communities of color. The time and effort required will make us safer and more united. We respectfully request that you respond by July 3<sup>rd</sup> 2015 if at all possible.

This report and the reform recommendations contained herein are endorsed by:

1. The Chapel Hill Carrboro NAACP
2. The Justice In Action Committee of the Town of Chapel Hill
3. The Marion Cheek Jackson Center
4. The Hank Anderson Breakfast Club
5. The University of North Carolina Center for Civil Rights
6. The Southern Coalition for Social Justice
7. The North Carolina Public Defender Association Committee on Racial Equity
8. The Chapel Hill Carrboro Human Rights Center
9. The Dan Pollitt Criminal Defense Bar
10. Organizing Against Racism NC

To: Mayor of Chapel Hill and Chapel Hill Town Council  
 From: Justice in Action Committee  
 Date: Approved by Unanimous Vote on March 3, 2016  
 Subject: Policing Reform Recommendations

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The Justice in Action Committee (JIAC) is uniquely charged with reflecting the Town of Chapel Hill's "commitment to preserving racial, economic, and social justice."<sup>1</sup> We fulfill this mission by "giving voice to issues and concerns regarding race and power in Chapel Hill and the surrounding community," and "advis[ing] Town Council on various ways to foster a more racially inclusive community."<sup>2</sup> In that capacity, the JIAC supports every recommendation made by the Orange County Bias Free Policing Coalition (OCBFPC). Indeed, the JIAC endorsed those recommendations prior to their submission.

Our support for the OCBFPC's recommendations is rooted in our recognition of the grave impacts of racially disparate policing on our community and our concern about the role of institutional and individual racial bias (including implicit bias) in creating the disparities reflected by the data accompanying the OCBFPC's recommendations. Most importantly, we acknowledge the impact that racially disparate policing has on its victims. The most obvious impacts are those stemming from unfair imposition of criminal penalties. But to say that the impacts of racially disparate policing are limited to criminal records is to severely understate the nature of the problem. First, racially biased arrests and searches have negative impacts even when they do not result in criminal charges. Second, victims of racially biased policing not only suffer from the intangible stigma that surrounds repeated interactions with law enforcement, but also from myriad collateral consequences.<sup>3</sup> Furthermore, through the lived experience of neighbors, these individual impacts metastasize and infect whole neighborhoods.

The JIAC has chosen to address each of the OCBFPC recommendations in turn.<sup>4</sup> We consider the response by the Chapel Hill Police Department (CHPD) to each recommendation and tender related observations and recommendations. We thank you for considering the following responses and for your attention to this important social justice issue.

**1. Identify existing policies that result in disproportionate policing and change those policies to mitigate the impact of race.**

Throughout 2015, the Community Policing Advisory Committee (CPAC) and the CHPD jointly

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<sup>1</sup> See the JIAC page on the Town of Chapel Hill website: <http://www.townofchapelhill.org/town-hall/government/boards-commissions>.

<sup>2</sup> It is important to note that the Community Policing Advisory Committee (CPAC) has a different mission – one which, although specifically focused on the operations of the Chapel Hill Police Department, does not contain language or direction to address issues of racial, social, and class justice. See the CPAC page on the Town of Chapel Hill website: <http://www.townofchapelhill.org/town-hall/government/boards-commissions>

<sup>3</sup> Please see the NC Justice Center's website: <http://www.ncjustice.org/?q=second-chance-alliance/collateral-consequences-explained>

<sup>4</sup> The language in bold is quoted verbatim from the OCBFPC recommendations.



reviewed CHPD policies.<sup>5</sup> Although these efforts are laudable, it remains to be seen whether they had a substantial effect on the number of stops, searches, and arrests of people of color. Moreover, to our knowledge, no existing policies were altered in response to this recommendation. Therefore, the JIAC recommends that the CHPD conduct a review of its Policy Handbook and incorporate language regarding specific application of its Fair and Impartial Policing policy into sections that address police activities with elevated potential to disproportionately affect minority communities, including, but not limited to the following: Domestic Violence Response (§2-3); Trespassing in Public Housing (§2-6); Response to Demonstrations (§2-13); Warning Tickets (§3-4); Vehicle Checkpoints (§3-14); Development, Distribution, Training, and Review of Policies (§4-3); Internal Affairs and Complaints (§4-10); and Disciplinary Procedures (§4-13). Such references should be designed to illustrate specific examples of how officers can avoid causing racially disparate impacts when performing the actions governed in each section.

## 2. **Adopt written policies explicitly prohibiting racial profiling.**

The CHPD adopted a policy entitled “Fair and Impartial Policing,” effective July 1, 2015. This document can be found within the Policy Handbook.<sup>6</sup> Notably, the CHPD recognizes that it must be “committed to protecting each individual’s constitutional rights and no stereotype or bias as defined in this policy shall be the motivation for the decision to initiate or execute any police activity, as such behavior is ineffective and the perception of same is damaging to our credibility and our community.”

The adoption of this policy is an important way to reflect and formalize the CHPD’s commitment to eradicating racial bias in policing. However, a statement of the disciplinary sanctions triggered by violation of the Fair and Impartial Policing mandate is notably absent. Without a clear enforcement mechanism, the policy is reduced to well-intentioned, but minimally effective, words on a page. As such, the JIAC recommends that the CHPD clearly outline the disciplinary action and/or remedial education that may result from violation of the Fair and Impartial Policing policy. The policy is a good step, but may inadequately alter undesirable behavior unless there are known, and consistently enforced, consequences for its violation. The use of disciplinary action and officer education will provide accountability and better ensure adherence to the policies incorporated in the Policy Handbook.

## 3. **Conduct periodic review of law enforcement officers’ stop, search, and arrest data.**

The CHPD conducts quarterly reviews of officers’ stop, search, and arrest data. Per the Fair and Impartial Policing policy, the Chief of Police, operational managers, and representatives from the CHPD’s legal department review data internally. The JIAC recommends that the Council charge CPAC with reviewing this data for irregularities to supplement the CHPD’s internal review and ensure community accountability.

Furthermore, the JIAC recommends that the CHPD make this data publicly available once the internal and CPAC reviews are completed (i.e., on a quarterly basis). Specifically, the JIAC recommends that this information be presented to the public at quarterly meetings in the community, as well as online.

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<sup>5</sup> It should be noted that the JIAC was not involved in these meetings and relies on CPAC to relate the effectiveness of these meetings to Town Council and the Mayor.

<sup>6</sup> CHPD, Policy Manual (July 2015), *available at* <http://www.townofchapelhill.org/home/showdocument?id=28619>.

In addition, consistent with the disciplinary policy, we encourage the CHPD to supplement the Fair and Impartial Policing Policy by explicitly requiring officers who demonstrate a pattern of racially disproportionate stops, searches, and/or arrests to receive additional training and education. After all, the review is less effective if the CHPD does not take action to address unacceptable practices identified as part of that process.

#### 4. **Require mandatory use of written consent-to-search forms.**

The CHPD initiated use of the written consent-to-search forms on July 1, 2015. Again, this policy, while praiseworthy, is of limited effect unless there are clearly stated consequences for its violation. The JIAC recommends that the CHPD establish disciplinary procedures and consequences for officers who decline to use proper consent-to-search forms and include these procedures and consequences both in the Fair and Impartial Policing portion of the CHPD Handbook and in the section directly governing Consent to Search procedures. At present, disciplinary action is discretionary. The JIAC feels that misuse or non-use of consent-to-search forms undermines this policy's effectiveness and that unwillingness to follow CHPD protocol on this issue should be addressed with mandatory disciplinary procedures.

We also appreciate the fact that CHPD produced a Spanish-language version of the Written Consent to Search form. The primary purpose of the form is to ensure that permission to conduct a search is given knowingly and willingly; as such, efforts to overcome any communication barriers between officers and the public are worthwhile. For this reason, the JIAC recommends that consent-to-search forms be translated into other predominant non-English languages used in Chapel Hill and surrounding communities.

**Prohibit vehicle stops and requests to search based solely on a subject's "nervousness," "presence in a high crime neighborhood," or "criminal record."<sup>7</sup>**

The JIAC acknowledges that both Federal and North Carolina case law support the use of these factors when assessing reasonable suspicion for traffic stops. However, this case law does not support the use of any one of these three factors *in isolation* as justification for initiating a stop.

North Carolina law provides some clear guidelines on reasonable suspicion and the use of the factors addressed by OCBFPC. The JIAC recommends that the CHPD conduct training on the proper scope of the reasonable suspicion standard and its susceptibility to overt and implicit racial bias. A helpful resource is provided by the UNC School of Government, entitled **US Federal Law & North Carolina Case Law via the UNC School of Government**

(<http://benchbook.sog.unc.edu/sites/benchbook.sog.unc.edu/files/pdf/Warrantless%20Stops.pdf>).

Particularly relevant contents are located at the following pages:

**High Crime Area** – See page 15.

**Nervousness** – See page 19.

**Prior Criminal Record** – See page 12.

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<sup>7</sup> NYU Law Review: <http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-74-4-Thompson.pdf>.

**Pretext** – See page 19.

Ultimately, the bedrock principle underlying the aforementioned law is the constitutional prohibition against “unreasonable” searches and seizures. Because it would be unreasonable for an individual to be suspected of criminal activity on the sole basis of any one of the factors identified above, we believe the CHPD should train its officers to understand this stipulation and guard against implicit racial bias that might lead them to reach contrary conclusions.

#### **5. Require dashboard cameras in police cars and body cameras for officers.**

The CHPD has utilized dashboard cameras in all patrol cars since 2010. In this respect, the CHPD is ahead of its counterparts in other local jurisdictions. This is, however, not the case regarding body cameras. Although the CHPD has been testing body cameras since the end of 2014, including outfitting certain patrol groups with the devices on a trial basis, the CHPD has yet to require that body cameras be worn by all of its officers who interact with the community. The CHPD has acknowledged that cost is not a barrier to outfitting officers with body cameras. However, the CHPD has listed two main barriers to outfitting officers with body cameras: (a) locating and testing body cameras that work in conjunction with existing dashboard cameras in vehicles and (b) lack of storage for body camera data. Although we respect the CHPD’s deliberative process, the JIAC notes that the Charlotte-Mecklenburg Police Department has already required body cameras to be worn by all officers.<sup>8</sup> Moreover, it has been more than 9 months since the OCBFPC recommendations were submitted and more than a year since the first body cameras were tested by the CHPD. Delay cannot be infinitely justified. The obstacles identified by CHPD are not adequate to prevent outfitting law enforcement personnel with body cameras during this calendar year.

Accordingly, JIAC recommends that the Council direct the CHPD to require officers to wear body cameras by no later than the end of 2016. We further recommend the adoption of a binding policy regarding the use of body cameras and data collected by these cameras. This policy should include a requirement that body cameras be fully operational during all officer interactions with community members. The JIAC further recommends that CHPD release all protocol for body camera usage, data storage, and body camera related policies. While we encourage the prompt deployment of body cameras, we recognize the value of community input regarding their use; accordingly, we think it would be prudent to invite public comment on the creation of the CHPD’s body camera policy.

#### **6. Designate marijuana a low law enforcement priority.**

The dataset that motivated the submission of the OCBFPC recommendations did not specify the types of contraband seized when arrestees were cited for possession of a controlled substance. However, communities across the country have increasingly recognized the prudence of de-prioritizing enforcement of laws prohibiting the possession of marijuana, in light of the verified, disproportionate effects of marijuana arrests on communities of color.<sup>9</sup> In response to the recommendation to exercise

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<sup>8</sup> See vote on investment in body cameras:

<http://www.charlotteobserver.com/news/local/crime/article9280391.html>; See also rapid implementation of body cameras: <http://www.charlotteobserver.com/news/local/crime/article35451150.html>

<sup>9</sup> For more on these findings, please see the American Civil Liberties Union’s 2013 report, *The War on Marijuana in Black and White* (<https://www.evernote.com/shard/s4/sh/4e3667a9-ee85-4cb9-a2e7->

discretion in the deployment of its limited resources, the CHPD could voluntarily take such a step, and we recommend that it do so. The department has been reluctant to take such an action for three primary reasons:

(1) First, the CHPD contends that enforcement of marijuana laws is already a de facto low priority in Chapel Hill. In support of this contention, the CHPD observes that marijuana-related offenses comprised 7% of the arrests in 2014. We think this type of substance-specific data evaluation is important and appreciate the effort undertaken in reporting the 2014 figures. The JIAC requests that this data also be analyzed for 2015 and continually evaluated on a quarterly basis as part of regular reviews of arrest/search data. Moreover, we note that the recommendation for de-prioritization was made out of concern about the disparate racial impact of enforcing marijuana laws. To reduce that impact, we recommend that more granular data be reported as well. The frequency or volume of enforcement efforts does not, without more specific information, verify that the status quo does not unfairly impact racial minorities. The JIAC therefore requests that marijuana arrest data be evaluated with respect to the racial composition of those arrested, and the geographical locations of these arrests, in order to increase the probative value of these statistics. Without such inquiry, the CHPD cannot know whether the current level of prioritization is having a disparate racial impact.

(2) Another obstacle cited by the CHPD to justify inaction in response to this recommendation is that it would be difficult to implement a policy establishing marijuana as the lowest law-enforcement priority. This concern is overstated. Multiple jurisdictions throughout the country have implemented similar policies, and the CHPD can--and should--communicate with its counterparts elsewhere to address implementation concerns.

(3) Finally, the CHPD claims that it lacks the legal authority to de-prioritize enforcement of marijuana laws. This is, in part, a straw-man argument, since the recommendations do not seek decriminalization of marijuana. Instead, the suggestion is merely that the deployment of limited CHPD resources should focus on the prevention of crimes more harmful to the citizenry, especially where the enforcement of marijuana laws has the potential to cause additional harm through associated racial impact.

Ultimately, the CHPD is in need of direction on this issue. Accordingly, the JIAC recommends that the Council consider adopting an ordinance directing the CHPD to treat enforcement of laws prohibiting possession of marijuana as the lowest law-enforcement priority. This policy seems justified, in spite of any health or safety concerns regarding its use, by the disproportionately greater harm of arrest or imprisonment, especially for our young people, in addition to the racial disparities in enforcement referenced above.

## **7. Mandate quarterly race reports to Council.**

The JIAC understands that the CHPD conducts quarterly internal evaluations, which is an excellent practice. Since the department is capable of incorporating consideration of the racial impact of the department's activities in these evaluations, we recommend that it do so, in order to make them even more valuable. The results of these evaluations should be shared broadly in the interest of both governmental transparency and accountability. The JIAC recommends sharing them with the Mayor and

the Council, as well as reporting them online and making print copies available in publicly accessible locations such as Town Hall and the Chapel Hill Public Library.

To further enable public education on these issues, the JIAC supports scheduling recurrent public meetings to discuss ongoing issues regarding race and policing in Chapel Hill and surrounding areas. Interested organizations and community members could attend and contribute, including, but not limited to, the CHPD, JIAC, CPAC, Orange County Human Relations Commission (HRC), community groups, and faith organizations.

#### **8. Mandate racial equity training for all officers.**

Currently, the CHPD provides racial-equity training for all officers, including all new hires. All officers receive the same training, regardless of their position within the CHPD. This training, condensed from the 5-hour module created by Dr. Laurie Friedel, is provided by CHPD employees. This is a laudable achievement, and the JIAC believes this training is a worthwhile investment by the CHPD. However, the content of the training informs its effectiveness, and we would appreciate more information on this issue.

The JIAC is still waiting on the receipt of CHPD training materials for review, and therefore cannot comment on their quality. However, conversations held with representatives of the CHPD regarding the impact of the training have been positive. The JIAC requests that the CHPD also work with local organizations that provide similar training in order to familiarize themselves with the local context of anti-racism and discrimination work in Chapel Hill and the South more broadly.<sup>10</sup> Relatedly, we encourage the CHPD to continue offering a condensed version of the training during the semiannual Citizens Police Academy.

#### **9. Adopt measures to increase public confidence in official police response to police misconduct allegations.**

The CHPD has a method for processing citizen complaints, reviewing allegations, and considering disciplinary action.<sup>11</sup> The process is wholly internal, although the CHPD also attempts to track citizen complaints online.<sup>12</sup> The CHPD has acknowledged that the process for evaluating citizen complaints against the CHPD is a long process that generally follows the timeline below:

A citizen complaint is made to the supervisor on duty → The supervisor evaluates the complaint and passes it on to the professional-standards officer → The professional-standards officer passes it on to the appropriate department head → all complaints eventually go to the Chief and the CHPD police attorney.

It should be noted that the involvement of the CHPD's own attorney, who is necessarily an interested party, could lead to the perverse incentive to conclude that CHPD officers were not engaged in

<sup>10</sup> Please see OAR (Organizing Against Racism): [www.oarnc.org/about-us/](http://www.oarnc.org/about-us/)

<sup>11</sup> Please see the CHPD's website regarding internal investigations: <http://www.townofchapelhill.org/town-hall/departments-services/police/office-of-professional-standards>

<sup>12</sup> Please see the CHPD's website: <http://www.townofchapelhill.org/town-hall/departments-services/police/office-of-professional-standards/quarterly-reports>

misconduct.<sup>13</sup> The CHPD should be mindful of this and take steps to ensure impartiality when responding to complaints. We recommend that the CHPD consider involving an appropriate third party during the final stage of complaint review.

In addition, to the maximum extent permitted within the constraints of employee privacy laws, the CHPD should publish the status and results of their investigation of complaints. The JIAC also recommends that, when available, the CHPD report the racial makeup of the complainant pool as potential indicia of disparate racial impact of policing practices.

#### **10. Increase civilian involvement in police decision-making.**

As previously noted in response to other OCBFPC recommendations, the JIAC recommends that the CHPD and Town Council provide a forum, with JIAC and CPAC in support, for dialogue between the CHPD, Town Council, and the community. These meetings or organized listening sessions could include a platform for community members to speak freely regarding policing in the community; summaries of CPAC work and JIAC work; quarterly race reports; and recent CHPD developments.

In addition, the JIAC recommends that the Town actively work towards achieving a more racially diverse membership on the Town's volunteer boards, commissions, and committees. Particularly relevant in this context is the composition of the CPAC, which works to facilitate relationships between the community and the CHPD. The impacts of racial bias in our community cannot be fully understood or effectively prevented without the input of people of color.<sup>14</sup> The CPAC must be more representative of the community it seeks to represent in order to carry out that mission effectively. We note that it is vital for us to heed our own advice on this issue—and that diversifying our own membership is our first and highest priority in the coming months.

### **CONCLUSION**

We encourage the CHPD, Mayor, and Town Council to take further effective and prompt actions to prevent further injustice in Chapel Hill and the surrounding communities. The JIAC is prepared to assist in that endeavor however possible.

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<sup>14</sup> The JIAC is prioritizing efforts to increase and diversify its membership in the hopes of fostering positive change within the Chapel Hill and surrounding communities.

To: Mayor and Council, Town of Capel Hill  
From: Roscoe Reeve, Chair, Community Policing Advisory Committee (CPAC)  
Date: March 9, 2016  
Subject: Response to “Policing Reform Recommendations”, Orange County Bias Free Policing Coalition (OCBFPC), May 18, 2015.

In the spring of 2015 OCBFPC sent to local law enforcement commanders and elected officials a letter calling for the reform of police practice and training in response to concerns about racial bias and profiling. In June 2015 you referred the coalition letter to both CPAC and the Justice In Action Committee (JIAC) for comment and recommendations.

CPAC recognizes that the coalition letter of concern about “racial disparities that adversely affect African-Americans and Hispanics” occurs within the context of a national dialogue about racial inequities. This climate has been further exacerbated by publicized national and regional incidents of police use of force which has highlighted the alienation of minority communities. The coalition identified specific areas they want addressed and made recommendations to “mitigate racially biased policing in Orange County”. The coalition spokesperson who presented the letter to Council called for a “community dialog” on the issues it raised. CPAC welcomed participation in this dialog as it had already begun to review of a number of the coalition’s issues starting in February, 2015. Further, one of the letter’s authors – Malcolm ‘Tye’ Hunter – is also a member of CPAC. Over subsequent committee meetings CPAC received from Chief Blue and other CHPD personnel a report and update on department responses to the issues of racial bias and profiling, along with the relevant policies, standards, and training that had been or were being applied.

CPAC and JIAC held a combined meeting in October, 2015 with Chief Blue and police representatives to discuss the list of recommendations from the coalition (see below), and a host of additional questions presented by JIAC and community members. CPAC proposed a joint response to the letter, but JIAC chose to send an independent response. Even so, we continue those discussions in our meetings and Chief Blue shared progress being made on the list of recommendations. We briefly summarize those next (Chief has extensive policy information data that is beyond the scope of one memo) and provide our assessment of that progress for Council.

From OCBFPC:

Following are eleven proposals designed to mitigate racially biased policing in Orange County.

1. Identify existing policies that result in disproportionate policing and change those policies to mitigate the impact of race.
2. Adopt written policies explicitly prohibiting racial profiling.
3. Conduct periodic review of law enforcement officers' stop, search and arrest data.
4. Require mandatory use of written consent-to-search forms.
5. Prohibit vehicle stops and requests to search based solely on a subject's "nervousness," "presence in a high crime neighborhood," or "criminal record."
6. Require dashboard cameras in police cars and body cameras for officers.
7. Designate marijuana a low law enforcement priority.
8. Mandate quarterly race reports to Council/Commission.
9. Mandate racial equity training for all officers.
10. Adopt measures to increase public confidence in official police response to police misconduct allegations.
11. Increase civilian involvement in police decision-making.

The bulk of the CPAC meetings in 2105 included review of police policies related to these issues at the request of Chief Blue. In each meeting, a portion of the policy manual and discussion of implementation was completed. Additionally, CHPD has made the policy manual available on their website (redacted any operational policies that could hamper abilities to respond to a critical incident or compromise officer safety) to help enhance understanding behind police work and continue to build trust and strengthen our relationships within our community. CPAC is committed to the continued review of police policies with an emphasis on racial equity and an analysis of potential disparate impacts. Chief Blue has informed us that he has instituted a new schedule for policy review to begin on July 1, 2016, that will afford CPAC a consistent opportunity for such analysis and oversight.

CPAC found Chief Blue very reflective about racial implications of policy covering a large range from hiring new officers, to body cameras, to outreach (e.g., ACLU). We learned the ongoing review of stop, search and arrest data led to consent-to-search form utilization. While local data paralleled national data around racial variance, the context of how that data is collected (e.g., how multiple stops of one offender is counted) and the ongoing measures and level of review of officers provided CPAC confidence that Chief is actively seeking to eliminate inappropriate gaps.



In addition to the proactive use of data, training, and policy implementation – some specific responsiveness to the coalition demands is apparent. We highlight a few examples next:

*a) Vehicle Stops*

In 1999, North Carolina became the first state to require the collection of traffic law enforcement statistics and data from 2004 to the end of 2013 was used in calculations for the report that has been cited in the petition. Much of that analysis was conducted by Frank Baumgartner; a political science professor at UNC-Chapel Hill.

Over 2 years ago, CHPD began the process of conducting quarterly reviews of traffic stop data to identify irregularities or patterns. Members of the Chapel Hill Police Department have been meeting with Prof. Baumgartner over the last few years to understand meaningful ways to analyze these data. For example, the state form doesn't require that officers collect information about the location of the stop, or the fact that the person stopped may be known to the officer or may have been stopped by them before. These context factors add meaningful information to any analysis of police activities.

Vehicle stops, searches, and arrests/citations are always conducted based upon an officer's probable cause, and/or reasonable suspicion that a violation of the law has occurred. CHPD officers make decisions based on their training and experience, as well as any articulable facts and/or observation during each incident. No two incidents will be exactly alike and the reasonableness of each officer actions is judged by the totality of the circumstances and the applicable local, state, or federal law. CHPD conducts quarterly reviews of stops to check for completeness and to look for any patterns or anomalies.

In addition to analysis of this data, specific measures related to consent forms are collected. On July 1, 2015, CHPD began requiring written consent forms on all consent searches of vehicles. (This does not apply to probable cause searches or searches incident to arrest.) Similar to consent searches of residences, the use of the form on vehicle searches informs drivers of their right to refuse such searches (absent probable cause) and adds integrity to cases for prosecution. It is also a recommended measure to reduce bias in policing. Although Chief Blue reports confidence in appropriate searches in absence of forms, the additional paperwork demonstrates willingness to hear the concerns of members of our community and a willingness to respond reasonably and appropriately. Further, the use of informed consent forms follows the recommendation of the Presidential's Task Force on 21st Century Policing.

Finally, Chief Blue and his staff are developing additional policy guidance around traffic stops to include enhanced documentation, guidelines for considering enforcement vs. warnings, and an emphasis on enforcing moving violations that impact community safety over regulatory violations. Consistent with our charge, CPAC will provide input on this policy as it is developed.

*b) Dashboard and Body Cameras*

CHPD has had in-car cameras for many years and continue to outfit our vehicles with this important evidentiary tool, which helps capture the events of vehicle stops. CHPD has been testing

Body Worn Cameras since early 2014. The rapid expansion of the body camera market means that there are more products requiring careful review so CHPD is proceeding methodically with testing and evaluation.

There are important privacy and policy considerations to ensure the appropriate deployment of body-worn cameras. These issues were considered in the last session of the North Carolina General Assembly but no legislative guidance was passed. CHPD has drafted a policy to regulate their use while their testing and evaluation efforts are underway and Chief Blue reports that we will begin another product test in the coming weeks. We expect that Chief Blue will continue to update our committee on the status of product testing and selection.

*c) Bias and Equity Training: Fair and Impartial Policing*

In July of 2015, Chapel Hill Police Department Policy 1-6, ***Fair and Impartial Policing*** went into effect. This policy explicitly states the Department's commitment to the effective delivery of fair and impartial police services in our community and a clear policy statement against racial profiling.

In January 2015, CHPD hosted a train-the-trainer course on the subject of Fair and Impartial Policing. Hillsborough PD, Carrboro PD, Durham PD, Mebane PD, the Orange and Durham County Sheriff's Depts., and UNC Dept. of Public Safety participated in this effort. This training built upon long-standing efforts to provide the most professional and principled enforcement of the law and provision of service to the community. A diverse group of employees were selected to attend the train-the-trainer sessions. This ongoing training will evolve over time, but CHPD has been engaged in a variety of additional training sessions related to this issue. Juvenile Minority Sensitivity Training, the Town's Customer Service Training, CIT and Verbal Judo are all excellent examples of specialized training designed to provide CHPD with the skills to effectively serve an increasingly diverse population. The Fair and Impartial Policing training is a continuation of those efforts.

*d) Designating marijuana as a low priority for law enforcement.*

Marijuana law enforcement by CHPD is not a designated priority. Approximately 7% of arrests in 2014 were related to marijuana. The decision to charge someone with a marijuana-related charge is no different than the decision to charge someone with any other violation of law; it should always be based upon the individual circumstances that an officer encounters. CHPD officers have consistently demonstrated the ability to use discretion, depending on those circumstances. These factors may include the amount, how it is packaged and past violations and/or encounters with officers. Marijuana possession and use cannot be ignored, because it is, in fact, against the law. Many of the concerns about the disparate outcome of drug enforcement need to be addressed by our lawmakers and prosecutors rather than asking our officers to not enforce violations of the laws they observe. This is an area where civilian involvement can be appropriately increased thru the legislative and judiciary oversight of police enforcement of the laws.

Chief Blue has acknowledged the disparate outcomes that may result from all enforcement efforts, including marijuana. The Department's ongoing training on the impacts of implicit bias is intended to address these, and other, disparities that may result from their work. This year, law

enforcement agencies from across Orange County will come together to jointly participate in the implicit bias training. It is our belief that this collaboration is an appropriate step to bringing consistent policing discretion to our communities.

Chief Blue is also developing a policy dealing with law enforcement discretion, in general, to include guidelines concerning handling low-level offenses in the absence of extenuating factors, a statement against the selective enforcement of any marijuana laws, training concerning the informal diversion of such offenders, and, if charges are necessary, a “pro-citation” policy rather than arrest.

We also know that the Town of Chapel Hill, the Orange County Health Department, and the University of North Carolina at Chapel Hill have partnered to fund and staff a position that will address alcohol and substance abuse in our community. We believe that the matter of low-level marijuana enforcement in our community may among the issues that are addressed by the coordinator for this position and we would welcome that partnership.

Finally, we believe that the question of equitable marijuana enforcement would be best considered by a district-wide work group of comprised of law enforcement, judicial officials, prosecutors, and others within the criminal justice community who could set a district-wide prioritization of various offenses, to include marijuana. This would bring consistency to the application of the law across the judicial district, as opposed to the creation of distinct policies between jurisdictions. Such a group has recently formed with the goals of examining the impact of race in our local criminal justice system and studying best practices and strategies for alleviating racial inequities. Chief Blue and CPAC Member Malcolm “Tye” Hunter are appointees to this group and will bring this issue to the Task Force for their consideration.

We believe that CPAC is one of a host of ways (e.g., police academy, complaint process) our police department includes citizen involvement.

Racial gaps and equity concerns are pervasive in society. Public schools, poverty trends, and inequitable national policies exacerbate the challenges presented to police. While those challenges to police and the immense challenges faced by minority and poor citizens remain, we believe our police force continues to be responsive and proactive in reducing bias in policing as well as building meaningful relationships with all community groups while keeping our community safe.