

Commission on Racial Justice & Equality

(Established June 2020 by: Mayor Linda Gorton)

Law Enforcement, Justice & Accountability Sub-Committee Recommendations & Report

(Respectfully Submitted September 9, 2020)

Vice Chairs:

David Cozart & Judge Jennifer Coffman

“The legal system can force open doors and even break them down, but they cannot build bridges. That job belongs to you and me.”

~ Thurgood Marshall, Supreme Court of the United States

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FROM THE CO-CHAIRS

We first thank Mayor Linda Gorton and Mayor’s Commission on Racial Equality Vice Chairs Dr. Gerald Smith and Roszaly Akins for giving us the honor, privilege, and opportunity to facilitate the Law Enforcement, Justice and Accountability (LEJA) Sub-Committee. Though a daunting task and a dubious distinction — particularly in light of recent local, state, and national traumatic events that have exacerbated tensions and accentuated pre-existing inequities — we deeply appreciate the vote of confidence evidenced by selecting us to lead. The audacious and intuitive principles of **Acknowledge, Ask, Address, and Action** provided an adequate springboard for the work from the very beginning. In fact, it inspired core tenets we established to ensure a working atmosphere most conducive to mutual respect for such a tenuous topic. This core tenet was “Systems not People — Improvement not Punishment”. Thank you for leading us to this through your overarching principles.

Secondly, we must thank the many community members, advocates, and stakeholders that provided guidance, input, and critical redirection from the public arena. Through viewing/reviewing meetings online/virtually and monitoring Sub-Committee discourse, many citizens and/or groups offered salient input that this committee sought to infuse into its body of thinking and recommendations. Thank you for holding us accountable during the development of recommendations that indeed seek to hold others accountable. Thank you for expressing when you agreed as well as when you disagreed. This committee did not take this lightly and appreciate those who input passionately and at times perhaps painfully. Lexington-Fayette County is blessed with many talented, educated, and experienced citizens who offered much to this process.

Most importantly, deep appreciation must be expressed to the members of this LEJA Sub-Committee. From first convening each member stared this Herculean task squarely in the eyes and not once averted gaze. LEJA members brought diverse perspectives, lived experiences, subject-matter expertise, determination, and humility to the table and were able to come together to engage in meaningful dialogue on emotionally charged issues in a respectful and effective manner. They displayed the very type of expressive yet constructive dialogue we must be able and willing to have if we truly want to see Lexington become the best city it can be. Without this grit wrapped in compassion and dedication, the LEJA could never have accomplished consensus on recommendations that will elevate our city, once they are implemented. This acknowledgment includes Laura Hatfield of the Mayor’s Office, who provided INVALUABLE support to this group. It has been our honor to serve as your Vice Chairs, and the credit for any remarkable accomplishment goes to each of you.

While much good effort has occurred, much work remains to be done. Addressing the many longstanding systemic issues and inequities — not only within the field of law enforcement but also within the broader criminal justice system — is not a sprint but a marathon. This quest has illustrated the doggedness we all will need to get this done. It is our hope that the recommendations included here will meaningfully contribute to the efforts. In fact, we believe if adopted and rightly implemented they can propel ahead to increased trust and accountability. They take us some steps away from racial inequities and systemic racism in law enforcement and justice systems and move ahead to more equitable and trusted practices.

Jennifer Coffman
Vice Chair

David Cozart
Vice Chair

“Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is an organized conspiracy to oppress, rob and degrade them, neither persons nor property will be safe.” — *Frederick Douglass*

EXECUTIVE SUMMARY

Introduction

The Law Enforcement, Justice, and Accountability (LEJA) Sub-Committee of the Mayor's Commission on Racial Equality was formed in July 2020. It has as its charge to address the following as it relates to the continuum of care associated with law enforcement and the judiciary process:

- Identify both the systemic and systematic practices of racism which has fostered structural inequalities, challenges, and deficiencies in Lexington-Fayette County.
- Assess the historic marginalization of African Americans in this community
- Recommend and advocate the systemic changes that will protect and promote racial opportunity, diversity, equity, and unity.

Given the recent events that have exposed discord and discontent in the relationships between local police and the communities they protect and serve, LEJA decided to begin its work examining Lexington Police Department (LPD) practices and procedures. The Committee would move on to address issues related to the Justice System, particularly the prosecutorial and adjudication process .

Methodology

Prior to LEJA sub-committee meetings, the Co-Chairs met several times for the purposes of building relationship, developing approach, and conducting preparatory research. This research included exploratory conversations with multiple citizens, subject matter experts, and others with keen and astute knowledge and/or experiences working with or within law enforcement and justice ecosystems. It was also during this phase that Co-Chairs surveyed the committee for any potential gaps in membership. It was concluded that there was under-representation from the Department of Public Advocacy (representation of indigent defendants). Once these initial efforts were completed, under the guidance and leadership of the overall Commission Vice Chairs, the LEJA sub-committee began meeting on July 9, 2020. The group would meet twice weekly through August 2020. (See below)

Meeting Dates & Speakers:

- 7/9, 7/16, 7/20, 7/23, 7/27, 7/30 (Guest Speaker: Dr. Gary Potter- ECU)
- 8/3 (Guest Speaker: Damon Preston- DPA), 8/6, 8/10 (Guest Speakers: Lt. Jonathan Bastian-FOP and Dave Barbarie-LFUCG), 8/13, 8/17, 8/20, 8/24, 8/27

LEJA took great care to model principles of universal respect of all people and to preserve the integrity of the ~~the~~ sub-committee. Some of the intentional movement to do so included:

- Shared/alternating co-chair lead facilitation
- Strict adherence to public meeting guidelines
- Recognition and sharing of all citizens input/public comments
- Established repository of all data for public access
- Equal regard, respect, and consideration of lived experiences and education

The Sub-Committee and its robust experience and expertise wasted no time gathering, discussing, and synthesizing a colossal amount of data, research, and information around first law enforcement, then justice. Special attention was given to consulting and examining based strategies and emerging practices with proven results. The group also found value in considering initiatives and efforts that were found to be unsuccessful and/or detrimental. Discussion became individual opinions. Individual opinions became corroborated notions. These group-endorsed notions would ultimately become informed and accepted recommendations. As recommendations formed, they were grouped into logical categories. Law Enforcement categories are: **(1) Structure and Staffing, (2) Monitoring and Accountability, (3) Citizen Input, and (4) Training and Accountability.** Justice System recommendations were ultimately delineated by County Attorney, Commonwealth Attorney, and Courts.

As a final step the Sub-Committee was left to wrestle with the prioritization of all recommendations. Given the sheer gravitas of the issues and the committee charge to address systemic racism within the institutions, the Committee determined that ALL recommendations were priority and must be considered. Nonetheless, for Law Enforcement it was concluded that the recommendations (15 total) in the categories of Monitoring and Accountability, Citizen Input, and Staff & Structuring would be expressed as primary. Even in this the Committee contests that Training, Recruitment, and Hiring items cannot be dismissed. Regarding the Justice section, because recommendations were fewer (9 total) and inextricably tied, no prioritizing is being offered or needed. All recommendations will be presented in both an abridged format and an unabridged format that includes justification, research, practical application, and implementation monitoring.

LAW ENFORCEMENT RECOMMENDATIONS

(ABRIDGED)

CATEGORY 1: CITIZEN INPUT

LE-1 RECOMMENDATION: CIVILIAN ASSISTANCE, PARTICIPATION AND TRANSPARENCY IN LPD'S DISCIPLINARY PROCESS

I. Participation: Restructure the 7 DRB membership to include 3 non-law enforcement civilians.

- 1) Amend the CBA, Article 15, section 3(c) on the make-up of the Disciplinary Review Board to include 3 voting civilians.
- 2) Mayor appoints and swears individual citizens to serve on the Disciplinary Review Board.
- 3) Selection of DRB civilian membership should be by public application and recommendations sent to the Mayor should come each Council district and representation should be encouraged from local civic groups, such as the NAACP, Urban League, LGBTQ groups, etc. and one (1) of the 3 civilians should be African American.
- 4) The DRB civilians should be a volunteer appointment.

II. Transparency: Publicize LPD Complaints (without Identity of Parties) and Dispositions

- 1) LPD must publicize disciplinary dispositions as soon as available in a format generally accepted for public information.
- 2) LPD makes every effort to comply with stated timeframes listed in the CBA on reaching disposition.
- 3) If extension is needed past the CBA timeframes, extension basis must be in writing and made available for the public by case number connection to the original complainant.
- 4) The City Law Dept. should assist LPD in devising a way to acknowledge to the public the existing of a complainant, sector involved, date filed, the CBA timeframes toward disposition, and any requested extensions by assigning a numbering system that does not violate identifying information.
- 5) The Mayor will request a resolution of support in the KRS 15.520(6)(c) "gag rule" law change from the Council, the Mayor will request support from the Lexington legislative delegation to introduce the bill for the change and the Mayor commits this legislative change as one for the LFUCG paid lobbyist to work on.

III. Assistance: Assist Civilians in Filing Disciplinary Complainants against LPD with a Citizen's Liaison or Revamped Citizen Advocate.

First Recommendation: The LPD's Public Integrity Unit (PIU) should provide transparent guidance through the process of **"What to Expect When You File a Complaint"**. This could be in the form of a brochure, video, or other means to educate citizens and should be shared with the Citizen's Advocate, Citizens' Liaison, LexCall, and other avenues where citizens access public information. It should be posted on the city's website on the PIU page.

Second Recommendation:

Creating a **"Citizens' Liaison"** would ensure citizens that the City of Lexington is committed to the following core beliefs of (<https://dps.georgia.gov/organization/about-dps/mission-and-core-beliefs>):

Trust: Trust is our hallmark and foundation. Our word is our bond. Truthfulness is what the public expects from us and what we demand of ourselves. We are committed to the highest ethical standards and highest level of performance beyond reproach.

Fortitude: We are committed to persevere through sacrifice and adversity to do the right thing, even at personal cost. In the tradition of those who preceded us, we are confident in our ability to fairly enforce all laws, to protect life and property, and to be accountable for our actions.

Compassion: We have the courage and wisdom to be fair. We are sensitive to the needs of others and are committed to treat all with dignity and respect.

Professionalism: As an elite and diverse team of highly trained, motivated men and women, we are committed to providing effective, efficient, and courteous service. We pledge to set innovative standards for others to follow.

The Citizens' Liaison should possess the following duties:

- 1) Be available for citizen's Monday-Friday, from 8:00a.m.-5:00p.m. (if full-time)
- 2) Assist in the writing of citizen complaints prior to sending it to PIU. This includes ensuring the citizen is aware of the type of supporting documents can be provided with the complaint.
- 3) Inform the citizen in regards to what to expect when filing a complaint against the officer, as well as, educating on the difference between informal vs formal complaints and the estimated timeframe in which it could be resolved.
- 4) Keep complainant updated throughout the process and answer questions along the way.
- 5) Keep statistics on all complaints filed, including, but not limited to, demographics of race and age of the complainant(s) and officer(s).
- 6) Conduct a survey with the complainant once the investigation or complaint is resolved.
- 7) Assist Council in approval or denial of the of the disciplinary recommendations being presented to them.
- 8) Any other duties deemed necessary by Council.

LE-2 RECOMMENDATION: CIVILIAN PARTICIPATION AT THE INVESTIGATIVE STAGE IN LPD'S DISCIPLINARY PROCESS

Participation: A panel of civilians will be sworn in as a 'Law Enforcement Agency' with limited jurisdiction to investigate informal and formal external police disciplinary complaints, a sworn civilian commission (SCC).

Proposal (Recommendation):

- 1) Mayor appoints and swears individual citizens with investigative duties and responsibilities regarding public complaints against the police. This Sworn Civilian's Commission (SCC) will be independent of the LPD but will mirror their PUI.
- 2) The SCC will be a "law enforcement agency", by definition, with limited jurisdiction to investigate external complaints against the police. This designation should overcome any KRS and CBA barriers.
- 3) The SCC will present its investigative finding to the Chief for processing, just like the PIU, but they will also present their investigative results to the Mayor through the Mayor's Commission of Public Safety for informational purposes only. The Chief will continue to be the person in position to act or not act on the findings.
- 4) Selection of SCC membership should be by public application and one should come from each Council district and representation should be encouraged from local civic groups, such as the NAACP, the Urban League, LGBTQ groups, etc.
- 5) Complaints that will be investigated by SCC are exactly the same as those investigated by PIU and included in General Order 193-02K appendix.
6. Council will enter into a MOU with LPD and FOB to allow cooperation and exchange of information between LPD and SCC.
7. The SCC should initially be a volunteer appointment, but a paid staff person should come from the Mayor's office to assist in investigations.

CATEGORY 2: MONITORING AND ACCOUNTABILITY

LE-3 RECOMMENDATION: BODY WORN CAMERAS

- 1) **Every** sworn officer should be required to wear Body Worn Cameras while performing law enforcement duties with minimum exception such as during undercover operations.
- 2) **All** officers performing law enforcement duties at approved off-duty jobs, in and outside the county, shall also be required to wear BWC, whether or not uniforms are required to be worn for public safety that shall be subject to the same policies and procedures outlined G.O. 2015-15B.
- 3) BWC Use Assessment and Report.
 - officers should be required to review a random selection (between 10%-25% depending on the reason) of their own BWC on an ongoing annual basis for purposes of performance review, promotion consideration, during probationary periods, or when officer is subject to any discipline with such being conducted with an outside “Coach” that is versed in implicit bias detection and/or with supervisors that have received annual implicit bias training from an outside source/coach with results of review documented in report form.
- 4) BWC Data Collection. Expand and enhance the collection of data for BWC failures to more specifically include the type of equipment failure, reasons for an interruption/ending recording, the circumstance of the recording, i.e. arrest, interrogation, traffic stop, etc.
- 5) Decrease officer discretion to turn off or not activate BWC on the basis of “officer safety” and “witness reluctance to be recorded”, which will be scrutinized as to its validity prior to imposition of any discipline for that failure to ensure the reasons are truly as stated.
- 6) Increase graduated discipline for failure to violations of BWC policies and procedures.
- 7) BWC technology that allows for an automatic activation, i.e. when weapon drawn, when specific buzz words are used by officer or person encountered.
- 8) Conduct a large scale study and analysis of data from data collected over the course of not less than one year, similar to the Stanford Study of the Oakland Police Department BWC, including and not limited to traffic stops, to determine differential treatment of blacks, latinos, disabled persons in comparison to whites based on tone, buzz words, specific language and words relating to anxiety, anger, respect, etc.
- 9) Increase timeframe in which department maintains non-evidentiary BWC recordings to a period of not less than 60 days and increase timeframe in which citizens have to file complaints to a like period of time.

LE-4 RECOMMENDATION: FOP & COLLECTIVE BARGAINING RECOMMENDATIONS

1. A local study to be conducted by a university and/or other consultants to examine the history of the Fraternal Order of Police that would include surveys, questionnaires, interviews, and other formal and informal academic process for the purposes of examining efficacy and potential modifications of the FOP and its current structure. The final report will be provided to the Mayor’s office.

2. Implementation requires state legislative action in state Law Enforcement Officers' Bills of Rights law to make amendments to the areas in which impede police officer accountability
3. Recommend that no city agreements be made in the immediate or in future collective bargaining contracts that would create restrictions, limitations regarding the implementation of disciplinary review boards, citizens review boards, or any other agreement that would impede full transparency or accountability efforts.

Implementation requires city administration to be aware of the recommendation during current and future collective bargaining negotiations.

LE-5 RECOMMENDATION: REVIEWS OF DE-ESCALATION AND USE OF FORCE

Reviews are currently conducted on use of force or critical incidents involving officers. The software used for those reviews and the reports which they generate are called "Blueteam." LPD should incorporate the documentation of de-escalation factors in the response to resistance Blueteam submissions on response to resistance (also called use of force), as well as have de-escalation factors assessed in the formal review of all critical incidents by the Critical Incident Review Committee. De-escalation should be reviewed separately from use of force / response to resistance and should be assessed in the formal review of all critical incidents by the critical Incident Review Committee, just as the Committee now reviews response to resistance.

LE-6 RECOMMENDATION: ANTI-RETALIATION POLICY AGAINST COMPLAINANTS

LPD should create an explicit anti-retaliation policy prohibiting retaliation by officers and LPD staff against persons who make complaints. Such a policy is a necessary companion with the recommended robust plan for greater citizen participation, education, and assistance in the complaint process.

LE-7 RECOMMENDATION: OFFICER DISCIPLINE

Look Back Period for Officer Discipline. Currently, the look back period for officer discipline is 5 years. The recommendation is that the look back period be an officer's entire career for the same type of conduct and behavior that violates department policy and procedure.

LE-8 RECOMMENDATION: ENHANCE INFORMATION IN POLICE REPORTS

Officers to document all encounters where a consensual or probable cause search was conducted in conjunction with field investigations outside the execution of search warrants and/or subsequent arrest. The requirement to complete documentation of each search shall apply to searches of persons, vehicles, land, buildings or property. Officers shall also document on the Field Investigation Form all circumstances of field investigative detentions where a person is handcuffed and not subsequently arrested.

LE-9 RECOMMENDATION : ENHANCE COMMUNITY RELATIONS

Officer to provide a business card with his or her name and telephone number and/or web address upon his or her encounter with any and every citizen in his or her duty role. The card will contain a link to the complaint and accolades site to allow for citizens to make both good and bad comments about his or her contact with that particular officer. This allows for on-going community input and not just when requested or for 2 hours on one day during the department accreditation process.

LE-10 RECOMMENDATION: REPORTS AND ANALYSES

Assess policing needs and reforms in Lexington and make regular reports to the Mayor, Council (including its Planning and Public Safety Committee), Chief of Police, and the media, with the goal of eliminating systemic racism. Analysis and reports in these areas:

1. Analyze and report E911 data - E911 office monthly report to Council / Mayor
2. Citizens Crime and Law Enforcement Survey (local) - One Lexington office
3. Victimization Survey (requires grant) - Office of Grants & Special Programs
4. Report on progress of recent reforms undertaken in LPD policies and practice - monthly from Chief of Police to Mayor / Council
5. Analysis and reporting on NIBRIS data furnished to FBI (with UK or ECU)
6. LPD report to public on historical data and patterns of bias: Work with local historians to undergo a review of their archives to uncover past patterns of bias and make an official report to the public. This would offer a more complete response to the Presidential Task Force on 21st Century Policing. It also educates current officers and Lexington residents about the hurdles they face in building trust with particular communities. For many outside of communities of color, the often violent and discriminatory policies of police forces prior to the 1970s have never been fully understood. The legacies of that behavior bleeds into, not just the current concerns of these communities, but also possibly policies and practices that may be understood to now be race neutral but originated in circumstances that continue to impact policing in those communities.

LE-11 RECOMMENDATION: NATIONAL USE OF FORCE DATA COLLECTION SUBMISSION

Recommendation that the Commission require all law enforcement agencies in Lexington-Fayette County submit their data to the National Use-of-Force Data Collection.

A secondary recommendation for consideration is communicating the need to our Fayette County legislators to consider statewide legislation to make submission by KY law enforcement a requirement rather than a voluntary submission.

CATEGORY 3: TRAINING, RECRUITMENT, & HIRING

LE-12 RECOMMENDATION: HIRING & RECRUITMENT PROPOSALS

- Recruit new officers for the Lexington Police Department and Fayette County Sheriff's office based upon the recommendations from the publication *Hiring for the 21st Century Law Enforcement Officer*.
- Expand identification and use of psychological tools. Specifically, tools that can identify racial implicit and explicit bias conducted by clinical psychologist or psychiatrist. LFUCG would be well served by hiring a consultant outside our system to enhance our current hiring and training of officers.
- Broadening the recruitment beyond local community and state efforts including employment postings at culturally diverse fraternities, sororities, and historically minority educational institutions throughout the United States. With this recommendation it is expected that additional cultural competency training would be required for new hires from other states.
- Examine and review the makeup of the oral board panel used in the interview process to ensure inclusion of culturally diverse and high crime neighborhood members.
- LPD create a "diversity committee" to help with recruitment composed of both department personnel and community members Increase the number of police officers who reflect the communities they serve.
- LPD should incorporate a minority participation goal for the LPD Explores Program to mirror Lexington demographics.
- LFUCG should increase funding for LPD recruiting effort.
- Increase the number of police officers who reflect the communities they serve.
- Create a citizen survey regarding crime issues and the police department to assess what citizens think about crime problems and enforcement. Utilize the survey results for determining hiring needs.

LE-13 RECOMMENDATION: TRAINING AND EVALUATION PROPOSALS

- (1) Long term plan for reduction in bias.
- (2) Officer training should include a course on the history of race and policing in the U.S. that also includes local history. Educating officers on this history could provide a historical context for current tensions and trust among Black residents and law enforcement officers.
- (3) LPD and the Fayette County Sheriff's Office should adapt a specific screening for racial bias in candidates.
- (4) Broad analysis of stored BWC footage to assess for patterns of bias that may not be evident in current review procedures. This big data analysis could assist with refining training procedure on bias and other issues where the departments feel they can improve officer behavior.
- (5) Conflict mediation / resolution training: All active police officers must take and complete annual "ConflictMediation and Resolution" certification courses, assessments and continued education (in addition to de-escalation training courses).

(6) Field Training Officer Refresher Course: A refresher course shall be provided by the Training Academy for FTO's every year as noted in this article: https://www.nbcnews.com/news/us-news/one-roadblock-police-reform-veteran-officers-who-train-recruits-n1234532?cid=sm_npd_ms_tw_ma

(7) Officer Education online with ECU: LPD should partner with ECU to provide an opportunity to bridge the gap between the associate degree provided by BCTC for Officers and Sergeants who are interested in obtaining a bachelor degree through the completion of an online police studies program at ECU.

CATEGORY 4: STRUCTURE AND STAFFING

LE-14 RECOMMENDATION: OFFICER/OFFICE OF ACCOUNTABILITY, MONITORING, AND EQUITY

Lexington (LFUCG) must develop and fully implement a position, office, or agent with the primary intent and function of monitoring LPD activity and other sectors of the justice system. The person in this position should have the capacity to analyze and gather data to identify any trends, methods, policies, or conditions that may indicate racial disproportionality, discrimination, or inequity. Data and activity to be regularly assessed, but not be limited to, inordinate presence in a particular geographic footprint of the city, use of force, body worn camera footage, personnel issues/complaints, convictions and/or other metrics necessary for thorough and timely identification of inequitable practices. This person will also work to coordinated various data strategies by law enforcement, the Administrative Office of the Courts and those in the justice sector to allow for systemic analysis and independent data as the foundation for future policy decisions. This office will report regularly to the Council and make their findings accessible to the public using various print and online formats.

LE-15 RECOMMENDATION: 911 DIVERSION PLAN - PILOT PROJECT

Goal: To direct calls pertaining to individuals with Mental Health, Addiction and Homelessness issues to direct services and to avoid incarceration and hospitalization.

- 1) Analyze 911 calls to detect patterns and concentrations of calls pertaining to mental health, addiction and homelessness issues.
- 2) Train 911 dispatchers as to calls that can be appropriately handled by non-law enforcement/or fire department.
- 3) Retain the services of a para-medical and a social worker to serve as a team to respond to cases that the dispatchers believe may be handled by non-law enforcement/or fire department.
- 4) Deploy the new response team during the targeted time slots and in the selected geographical area.
- 5) Collect data as to number and type of calls, manner of response and outcomes.
- 6) Report to the Mayor and Council after a year of operations.

LE-16 RECOMMENDATION: SOBERING CENTER

Proposal (Recommendation):

LFUCG should develop a plan to create a sobering center including identifying and pursuing external funding such as grants and state and federal support similar to other program such as those in other cities noted below. A sobering center is a facility or setting providing short-term (4-12 hour) recovery, detoxification, and recuperation from the effects of acute alcohol or drug intoxication. This center would be a fully staffed facility used as an alternatives to jail and emergency departments

JUSTICE SYSTEM RECOMMENDATIONS
(ABRIDGED)

J1 RECOMMENDATIONS FOR THE OFFICES OF FAYETTE COMMONWEALTH’S ATTORNEY AND FAYETTE COUNTY ATTORNEY

J1-1 1. Both offices should look into implementing a program such as Vera’s Prosecution and Racial Justice Program (PRJ), which publishes a guide to aid prosecutors seeking to conduct research into their offices’ work and address any problems contributing to racial disparity the research uncovers. The guide is based on PRJ’s nine years of experience as research partner with a number of district attorneys around the country.

J1-2 2. Both offices should develop and require continuing education on the subject of racial disparity in prosecution and its negative effects on the community.

J1-3 3. Programs should also be instituted that teach cultural competence, so that prosecutors can effectively interact, communicate and understand people across cultures.

J1-4 4. The Fayette County Attorney’s Office should consider broadening their diversion program to include more offenders by making diversion available for all first time offenders that qualify and any misdemeanor offender without charges over a 5 year span. They should also implement culturally component strength based behavior modification as an alternative to incarceration. The strength-based approach focuses on the positive attributes of a person or a group, rather than the negative ones.

J1-5 5. The Fayette Commonwealth’s Attorney Office should review their policies regarding Persistent Felony Offender charges, which can result in over-incarceration, which disproportionately affects Blacks and African-Americans. The discretion to bring these charges rests solely with the Commonwealth’s Attorney Office.

J1-6 6. The Mayor’s/ Prosecuting offices should fund/ conduct a study to examine 1) how many people reached negotiated plea deals with prosecutors, 2) details on initial offers, 3) how these offers changed over time, and 4) if plea deals varied based on race of the person accused of a crime, prosecutor, or victim, and make findings public.

A.)This information would provide both prosecutors and the public with transparency in the use and effect of prosecutorial discretion.

B.)This study would provide prosecutors with insight into their office’s practices and patterns.

C.)Data collection can lead to improved practices, fairer policies, more appropriate sentences and diminish racial disparities.

J2 RECOMMENDATIONS FOR THE COURTS

J2-1 Court Staffing:

Court personnel should reflect the racial and ethnic background of the community and should have mandatory instruction on racial bias in order to better serve the needs of minority groups.

J2-2 Juries:

Trial Judges should use all efforts to educate jurors on racial bias and to insure an unbiased jury panel. Peremptory challenges inject racial discrimination into the jury selection process. Prosecutors, defense counsel and judges should seriously consider elimination or modifications to these rules in order to insure representative juries.

J2-3 Reducing probation terms:

Judges should recognize that lengthy periods of probation may serve to cause a piling on of longer sentences and result in over-incarceration. Probation, by design, is an important alternative to incarceration and should be encouraged . But courts should be wary of using probation as an automatic response to low-level offending, and should ensure that probation prevents incarceration rather than just delaying it. Currently, probation acts as a net-widener that unnecessarily expands the correctional system's reach to people who commit low-level crimes or who are low-risk and do not need to be under strict supervision.

**LAW ENFORCEMENT RECOMMENDATIONS
(UNABRIDGED)**

**CATEGORY 1:
CITIZEN INPUT**

**LE-1 RECOMMENDATION: CIVILIAN ASSISTANCE, PARTICIPATION AND TRANSPARENCY IN
LPD's DISCIPLINARY PROCESS**

**I. Participation: Restructure the 7 DRB membership to include 3 non-law enforcement
civilians.**

Civilian involvement in Police Disciplinary Process and Proceedings – **(Disciplinary Review
Board - restructured)**

Proposal (Recommendation):

- 1) Amend the CBA, Article 15, section 3(c) on the make-up of the Disciplinary Review Board to include 3 voting civilians.
- 2) Mayor appoints and swears individual citizens to serve on the Disciplinary Review Board.
- 3) Selection of DRB civilian membership should be by public application and recommendations sent to the Mayor should come each Council district and representation should be encouraged from local civic groups, such as the NAACP, Urban League, LGBTQ groups, etc. and one (1) of the 3 civilians should be African American.
- 4) The DRB civilians should be a volunteer appointment.

Problem/Proof:

- KRS 15.520 (5)(a) – investigated by employing agency or another designated law enforcement agency.
- CBA – Article 15, Section 3 – states the PUI should investigate.
- General Order 193-02K – consistent with KRS/ CBA

Pain/Practical/Pragmatic:

LPD mission of professionalism and effectiveness in serving and protecting all citizens of Fayette County without regard to race, color, religion, sex, sexual orientation, age, disability, national origin or social economic position and involving the citizenry in their disciplinary process can remove perceptions of discrimination because the integrity of our police should be above reproach.

LPD disciplinary procedures can line-up with other professionals in the judiciary system. The Judicial Conduct Commission has 2 members appointed by governor who are neither Judges nor attorneys.

The CBA currently states the DRB shall consist of (7) members. Six (6) members shall be Assistant Chiefs, Commanders or Captains. One (1) member shall be a member covered by this agreement appointed by the Lodge President for a two year term. The Lodge President may appoint an alternate to serve in said capacity. The Chairperson for the DRB shall be appointed by the Chief. A representative of the Department of Law shall serve as a liaison to the Board in a non-voting capacity.

Progress Tracking:

Terms should be staggered and should be for 2 years and can be for 2 consecutive terms. Members must take an oath of confidentiality.

II. Transparency: Publicize LPD Complaints (without Identity of Parties) and Dispositions**Proposal (Recommendation)**

- 1) LPD must publicize disciplinary dispositions as soon as available in a format generally accepted for public information.
- 2) LPD makes every effort to comply with stated timeframes listed in the CBA on reaching disposition.
- 3) If extension is needed past the CBA timeframes, extension basis must be in writing and made available for the public by case number connection to the original complainant.
- 4) The City Law Dept. should assist LPD in devising a way to acknowledge to the public the existing of a complainant, sector involved, date filed, the CBA timeframes toward disposition, and any requested extensions by assigning a numbering system that does not violate identifying information.
- 5) The Mayor will request a resolution of support in the KRS 15.520(6)(c) "gag rule" law change from the Council, the Mayor will request support from the Lexington legislative delegation to introduce the bill for the change and the Mayor commits this legislative change as one for the LFUCG paid lobbyist to work on.

Problem/Proof:

- KRS 15.520 (6)(c) "gag rule"
- CBA – no direct mention of the "gag" rule other than Article 15, Section 1.

Pain/Practical/Pragmatic:

Civilians who file complainants against a police officer are typically left without any resolution. While the CBA indicates the PIU should complete investigations in 60 days, with the time commencing on the date the formal complaint was made and end when disposition occurs. The PIU and Chief can request an extension of timeframe. Final disposition can extended if officer does not accept recommended discipline by the Chief and invokes his due process rights with requesting a hearing with Disciplinary Review Board, LFUCG Counsel, and ultimate court process.

Keeping the civilians in the loop throughout the process would eliminate the perception of something sinister occurring.

Progress Tracking:

Quarterly and annual reports of informal and formal filed and publicized by LPD on the website, newspaper, Mayor's report as recommended by the civilian liaison report or citizen's advocate report, dependent on which model is selected.

Seek the General Assembly to eliminate the "gag" rule on police proceedings. Eliminating this "gag" rule will not unduly affect the officer's due process rights.

III. Assistance: Assist Civilians in Filing Disciplinary Complainants against LPD with a Citizen's Liaison or Revamped Citizen Advocate.

Problem/Proof:

Although there is a process to file a complaint against a Lexington police officer, it is within the police department itself; the Public Integrity Unit. The process is not clear as to what occurs once a complaint is filed and there is no guidance through the process.

If citizens do not feel comfortable filing a complaint through the police department, they can get assistance from the Commissioner of Public Safety, however, with only two employees, there is not a dedicated person to assist citizens with the process.

Lastly, the Citizens' Advocate is available to help with complaints concerning various departments within the city, but does not assist with any complaints against a police officer or the police department.

Transparency Plan:

- 1) To increase citizens knowledge of the process when reporting police misconduct; informal and formal.
- 2) To create materials to educate citizens of the complaint process if they pursue on their own.
- 3) To have assistance through the process from a neutral third party.

First Recommendation:

The Lexington Police Department's Public Integrity Unit (PIU) should provide transparent guidance through the process of **"What to Expect When You File a Complaint"**. This could be in the form of a brochure, video, or other means to educate citizens and should be shared with the Citizen's Advocate, Citizens' Liaison, LexCall, and other avenues where citizens access public information. It should be posted on the city's website on the PIU page.

PIU's current form, "Citizen Comment Form", does not distinguish between compliments and complaints. For statistical purposes, checkboxes should be added for each. Other statistics that should be added, but not limited to, are demographics of race and age of the complainant(s) and officer(s), sector, etc. This will help identify any areas of racial inequities/disparities throughout the city.

If citizens do not feel comfortable filing a complaint directly with the PIU, then a second avenue should be available within city government. **See second recommendation.*

Progress Tracking

Statistics:

Collected statistics should be reviewed by the Council, Commissioner of Public Safety, Chief of Police, and Mayor on a quarterly basis to help identify any areas of racial inequities/disparities. They should also be presented to Council's Planning and Public Safety Committee, posted on

the City of Lexington's website annually, and provided to the media. Names of complainants and officers should be kept confidential. Posted information should include, but not limited to, date(s) of filings, sector, race/age of complainant and officer, alleged misconduct, status of findings (pending investigation/resolved), resolution, and date of resolution.

Second Recommendation:

Creating a "Citizens' Liaison" would ensure citizens that the City of Lexington is committed to the following core beliefs of (<https://dps.georgia.gov/organization/about-dps/mission-and-core-beliefs>):

Trust

Trust is our hallmark and foundation. Our word is our bond. Truthfulness is what the public expects from us and what we demand of ourselves. We are committed to the highest ethical standards and highest level of performance beyond reproach.

Fortitude

We are committed to persevere through sacrifice and adversity to do the right thing, even at personal cost. In the tradition of those who preceded us, we are confident in our ability to fairly enforce all laws, to protect life and property, and to be accountable for our actions.

Compassion

We have the courage and wisdom to be fair. We are sensitive to the needs of others and are committed to treat all with dignity and respect.

Professionalism

As an elite and diverse team of highly trained, motivated men and women, we are committed to providing effective, efficient, and courteous service. We pledge to set innovative standards for others to follow.

The Citizens' Liaison should possess the following duties:

- 1) Be available for citizen's Monday-Friday, from 8:00a.m.-5:00p.m. (if full-time)
- 2) Assist in the writing of citizen complaints prior to sending it to PIU. This includes ensuring the citizen is aware of the type of supporting documents can be provided with the complaint.
- 3) Inform the citizen in regards to what to expect when filing a complaint against the officer, as well as, educating on the difference between informal vs formal complaints and the estimated timeframe in which it could be resolved.
- 4) Keep complainant updated throughout the process and answer questions along the way.
- 5) Keep statistics on all complaints filed, including, but not limited to, demographics of race and age of the complainant(s) and officer(s).
- 6) Conduct a survey with the complainant once the investigation or complaint is resolved.
- 7) Assist Council in approval or denial of the of the disciplinary recommendations being presented to them.
- 8) Any other duties deemed necessary by Council.

Progress Tracking

Statistics:

Collected statistics should be reviewed by the Council, Commissioner of Public Safety, Chief of Police, and Mayor on a quarterly basis to help identify any areas of racial inequities/disparities. They should also be presented to Council's Planning and Public Safety Committee, posted on the City of Lexington's website annually, and provided to the media. Names of complainants and officers should be kept confidential. Posted information should include, but not limited to, date(s) of filings, sector, race/age of complainant and officer, alleged misconduct, status of findings (pending investigation/resolved), resolution, and date of resolution.

Pain/Practical/Pragmatic:

Citizens' who are making statements in regards to criminal matters when filing complaints could create statutory issues. Citizens, in that case, should seek guidance from and/or retain an attorney.

Funding Recommendations:

1st Funding Scenario:

New Position: Citizens' Liaison

Full/Part Time: Full-Time

Regular/Temporary: Regular

Pay Grade: 518 (equivalent to the Citizens' Advocate)

Minimum Salary: \$45,260.80

2nd Funding Scenario:

New Position: Citizens' Liaison

Full/Part Time: Part-Time

Regular/Temporary: Regular

Pay Grade: 518 (equivalent to the Citizens' Advocate)

Minimum Salary: \$45,260.80

Please consider the following information from HR for open range of pay:

Pay Grade 518

Min	Mid	Max	
\$ 45,260.80	\$ 56,576.00	\$ 67,891.20	Yearly
\$ 1,740.80	\$ 2,176.00	\$ 2,611.20	Bi-Weekly
\$ 21.760	\$ 27.200	\$ 32.640	Hourly

When calculating salary costs, we start by calculating 20% into the range, as we use an open range pay system and most candidates do not start at grade minimum but could have a starting rate of pay above or below this amount. We then add payroll costs, benefits and retirement. For a position with a pay grade of 518, that total is \$71,533.54 per year.

3rd Funding Scenario:

The Citizens' Advocate serves as an impartial agent to the citizens of Fayette County and investigates and resolves complaints. This position also recommends policy changes to improve access to LFUCG departments, divisions, agencies, and offices, but currently does not address police or police department issues. Since this position is appointed by Council, it is the hope that Council will amend these duties to include helping citizens file complaints against the police.

Currently, they assist with sending citizens' complaints on to PIU, which means they are already familiar with the process. This is beneficial when informing citizens of the process. Using existing positions will also give a clarity as to duties that need to be added or redacted and to also give time to evaluate if there is a need for creating and funding a full or part-time position.

This position is currently a part-time position and may need to become a full-time position to be available to citizens. Currently, this position reports to the CAO. Citizens may feel most confident in the process if it's placed within the Council Office.

Documents Referenced:

Citizens' Advocate:

- <https://www.lexingtonky.gov/departments/citizens-advocate-office>
- <https://www.atlantaga.gov/government/mayor-s-office/projects-and-initiatives/citizen-s-advocate>

Public Integrity Unit:

- <https://www.lexingtonky.gov/public-integrity-unit>

Other States Process for Complaints against Police:

- <https://www.georgialegalaid.org/resource/your-rights-and-the-police>
[1#:~:text=File%20a%20written%20complaint%20with,sure%20to%20consult%20a%20lawyer](https://www.georgialegalaid.org/resource/your-rights-and-the-police)
- https://www.michigan.gov/msp/0,4643,7-123-1579_1656_58970-260956--,00.html
- <https://www1.nyc.gov/site/ccrb/complaints/file-complaint.page>

Citizenship Rights and Responsibilities:

- <https://www.uscis.gov/citizenship-resource-center/learn-about-citizenship/citizenship-and-naturalization/citizenship-rights-and-responsibilities>

Commissioner of Public Safety:

- <https://www.lexingtonky.gov/departments/public-safety>
- <https://www.criminaljustice.ny.gov/ops/index.htm>
- <https://www.bloomfieldhillsmi.net/387/Public-Safety-Commissioner#:~:text=In%20March%202017%2C%20City%20Manager,was%20appointed%20Public%20Safety%20Com> missioner.
- <https://dps.georgia.gov/organization/about-dps/mission-and-core-beliefs>

LE-2 RECOMMENDATION: CIVILIAN PARTICIPATION AT THE INVESTIGATIVE STAGE IN LPD'S DISCIPLINARY PROCESS

I. Participation: A panel of civilians will be sworn in as a 'Law Enforcement Agency' with limited jurisdiction to investigate informal and formal external police disciplinary complaints, a sworn civilian commission (SCC).

Proposal (Recommendation):

- 1) Mayor appoints and swears individual citizens with investigative duties and responsibilities regarding public complaints against the police. This Sworn Civilian's Commission (SCC) will be independent of the LPD but will mirror their PUI.
- 2) The SCC will be a "law enforcement agency", by definition, with limited jurisdiction to investigate external complaints against the police. This designation should overcome any KRS and CBA barriers.
- 3) The SCC will present its investigative finding to the Chief for processing, just like the PIU, but they will also present their investigative results to the Mayor through the Mayor's Commission of Public Safety for informational purposes only. The Chief will continue to be the person in position to act or not act on the findings.
- 4) Selection of SCC membership should be by public application and one should come from each Council district and representation should be encouraged from local civic groups, such as the NAACP, the Urban League, LGBTQ groups, etc.
- 5) Complaints that will be investigated by SCC are exactly the same as those investigated by PIU and included in General Order 193-02K appendix.
6. Council will enter into a MOU with LPD and FOB to allow cooperation and exchange of information between LPD and SCC.
7. The SCC should initially be a volunteer appointment but a paid staff person should come from the Mayor's office to assist in investigations.

Problem/Proof:

- KRS 15.520 (5)(a) – investigated by employing agency or another designated law enforcement agency.
- CBA – Article 15, Section 3 – states the PIU should investigate.
- General Order 193-02K – consistent with KRS/ CBA

Pain/Practical/Pragmatic:

LPD mission of professionalism and effectiveness in serving and protecting all citizens of Fayette County without regard to race, color, religion, sex, sexual orientation, age, disability, national origin or social economic position and involving the citizenry in their disciplinary process can remove perceptions of discrimination because the integrity of our police should be above reproach.

Citizens believe that LPD utilize desired result driven investigations. This perception can be overcome by allowing 2 simultaneously investigations to occur, having access to the same resources and presenting both to the Chief, per the CBA. If they conclude the same, great, if not the Chief should determine where the discrepancy occurred.

Progress Tracking:

The SCC members should have 1 from each council district but each investigation should be conducted by a sub-panel of 3, one of which must come from the District that the complainant arises from.

Terms should be staggered and should be for 3 years and can be for 2 consecutive terms.

Members must take an oath of confidentiality.

**CATEGORY 2:
MONITORING AND ACCOUNTABILITY**

LE-3 RECOMMENDATION: BODY WORN CAMERAS

DOCUMENTS REVIEWED

News.stanford.edu/2016/06/15/Stanford-big-data-study-finds-racial-disparities-oakland-calif-police-behavior-offers-solutions/
www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html

G.O. 2015-15B Body Worn Cameras

G.O. 1973-15L Off-Duty Employment

G.O. 1973-02K Discipline

Body Worn Camera Presentation, 8/18/2020, Planning and Public Safety Committee (pages 48-85)

- BWC policies and procedures
- BWC statistics 2018-2020

Committee Member Recommendations

- Brian Maynard
- Jennifer Coffman
- Briana Persley
- Melynda Price

Community Comments and Recommendations

- April Taylor

RECOMMENDATIONS

1) **Every** sworn officer should be required to wear Body Worn Cameras while performing law enforcement duties with minimum exception such as during undercover operations.

Practical/Pragmatic

- (Per Dr. Gary Potter) BWC is the easiest intervention to enhance accountability
- Likelihood of officers with cameras using force is roughly ½ that of officers without cameras
- Officers with cameras receive approximately 1/10 the number of complaints as those without.

Pain

- Cost – However, Mayor Gorton’s Press Release on 8/11/2020 expanded BWC program to include all officers and some civilian employees through a grant application for \$135,250 to Justice Assistance Grant Program
- 633 sworn officers, 428 trained and assigned BWC = difference of 205

Progress Tracking

Allows data collection for any and all contacts that law enforcement has with the community/public for study, assessment, training and self-audit purposes.

2) **All** officers performing law enforcement duties at approved off-duty jobs, in and outside the county, shall also be required to wear BWC, whether or not uniforms are required to be worn for public safety that shall be subject to the same policies and procedures outlined G.O. 2015-15B.

Practical/Pragmatic

- Provides the officer and the public he/she encounters, even in an off-duty capacity, the confidence that the contacts are appropriate and captured when a problem arises during that contact, which is likely when alcohol is present and plain clothes officers are patrolling in off-duty capacity.

Pain

- The availability of BWC for off-duty purposes. Those not currently trained and assigned a BWC must be trained and have the ability to check out the equipment prior to commencing an approved off-duty assignment.
- Requires an amendment to G.O. 1973-15L, Off-Duty Employment, as such does not currently address or require BWC; nor does it address those off-duty jobs that do not require officers to wear a uniform.
- Requires modification to Form 260, 261, 262.

Progress Tracking

Allows data collection for any and all contacts that law enforcement has with the community/public for study, assessment, and self-audit purposes.

3) BWC Use Assessment and Report.

- officers should be required to review a random selection (between 10%-25% depending on the reason) of their own BWC on an ongoing annual basis for purposes of performance review, promotion consideration, during probationary periods, or when officer is subject to any discipline with such being conducted with an outside "Coach" that is versed in implicit bias detection and/or with supervisors that have received annual implicit bias training from an outside source/coach with results of review documented in report form.

Practical/Pragmatic

- provides necessary feedback to officer, as well as data collection, of contacts between officers, the public, suspects and others regarding characteristics and traits that may evidence bias and racism.

Pain

- Coach should be outsourced from police department, possibly those persons listed as training resources on the subject and topic for the police department, for objectivity when footage is being reviewed during periods of probation and discipline actions. Such footage can be reviewed by officers with supervisors or designated personnel who undergone annual implicit bias training and certified by an outside education source when for purposes of promotion and routine performance review.

Progress Tracking

Allows for improved positive officer contacts and collection of data for on-going training and reporting purposes.

4) BWC Data Collection. Expand and enhance the collection of data for BWC failures to more specifically include the type of equipment failure, reasons for an interruption/ending recording, the circumstance of the recording, i.e. arrest, interrogation, traffic stop, etc.

Practical/Pragmatic

Collects more data for use and assessment for training, reporting to Chief of Police, Mayor, Council, and public.

Pain

- Requires modification of the G.O. 2015-15B in order to expand the categories in which to catalog the BWC footage.

Progress Tracking

- Determine the purposes and use for the data collected.
- What is the difference between “Equipment Failure” and “Attempted to Activate with Failure”?

5) Decrease officer discretion to turn off or not activate BWC on the basis of “officer safety” and “witness reluctance to be recorded”, which will be scrutinized as to its validity prior to imposition of any discipline for that failure to ensure the reasons are truly as stated.

Practical/Pragmatic

- Officer can use that category to excuse his failure to activate or interrupt BWC recording.
- G.O. 2015-15B IV.B. states officer does not have to disclose if recording but does have to admit if recording.
- Officer can turn the camera away from “reluctant witness” and still capture the audio.

Pain

Requires amendment to G.O. 2015-15B to increase the scrutiny given to the use of those categories.

Progress Tracking

Goal is to have 100% of all officer contact with public recorded with scrutinized limitations on when an officer can use the excuse to justify the failure to activate.

6) Increase graduated discipline for failure to violations of BWC policies and procedures.

Practical/Pragmatic

- Provides community assurance that police department takes serious the importance of the BWC program and that its usefulness outweighs the burden of managing it.

- Current discipline ranges from written reprimand for 1st offense to 3 day suspension for 3rd offense. For repeated failures, i.e., five (5) or more offenses within 12 months, termination may result.

Pain

- Will require modification to G.O. and possibly CBA to change 5 year look back

Progress Tracking

- Will provide transparency when officers fail to comply with policy and procedures.
- Will decrease in officer failures.

7) BWC technology that allows for an automatic activation, i.e. when weapon drawn, when specific buzz words are used by officer or person encountered.

Practical/Pragmatic

- Helps achieve 100% recording of officer contact
- Eliminates some officer discretion in activating BWC
- Decreases instances where circumstances preclude activation due to time and circumstances.

Pain

- Cost associated with new and improved technology

Progress Tracking

- To meet goal of 100% recordings of officer contacts and transparency to the public.

8) Conduct a large scale study and analysis of data from data collected over the course of not less than one year, similar to the Stanford Study of the Oakland Police Department BWC, including and not limited to traffic stops, to determine differential treatment of blacks, latinos, disabled persons in comparison to whites based on tone, buzz words, specific language and words relating to anxiety, anger, respect, etc.

Practical/Pragmatic

- Collection of data for officer training and policy review purposes from all citizen contacts be it consensual or based on probable cause whether or not such results in a subsequent arrest or complaint.

Pain

- Cost to employ the technology for the data needed
- Cost associated with analyzing data by socialists and/or psychologists. However, Dr. Price indicated a possible collaboration with UK staff.
- Requires new or amended existing General Order.

Progress Tracking

Allows for the collection of additional data for training, policy, and self-audit purposes.

9) Increase timeframe in which department maintains non-evidentiary BWC recordings to a period of not less than 60 days and increase timeframe in which citizens have to file complaints to a like period of time.

Practical/Pragmatic

- Allows laypersons time to navigate Open Records process and complaint process
- Per New York Times article dated 6/19/2020, over 50% of officer contacts are non-criminal (35%) and traffic stops (16%).

Pain

- Change in G.O. and Open Records that will allow community member and/or his or her attorney to have the same access to the recordings involving him or her as the prosecutorial agencies are allowed.
- Cost associated with maintaining recordings a longer period of time.

Progress Tracking

- Another data collection method that provides transparency and access to the "Guardians".

LE-4 RECOMMENDATION: FOP & COLLECTIVE BARGAINING

- 1) Recommendation is brought forward from the Duke Law Journal
<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3890&context=dli>

In the 2017 study involving 178 police union contracts, Dr. Stephen Rushin identified seven categories in which police contracts can present barriers to police transparency and accountability. LPD's profile was included in this study and the study indicated that three out of the seven categories were potential barriers. The seven categories were Delays Interviews, Provide Access to Evidence before Interview, Limits Consideration of Disciplinary History, Limits Length of Investigation or Establishes Statute of Limitations, Limits Anonymous Complaints, Limits Civilian Oversight and Provides for Arbitration.

The 3 categories for LPD are as follows: Limits Consideration of Disciplinary History, Limits Length of Investigation or Establishes Statute of Limitations and Provides for Arbitration. (Page 1261)

Recommendations:

1. A local study to be conducted by a university and/or other consultants to examine the history of the Fraternal Order of Police that would include surveys, questionnaires, interviews, and other formal and informal academic process for the purposes of examining efficacy and potential modifications of the FOP and its current structure. The final report will be provided to the Mayor's office.

Implementation requires state legislative action in state Law Enforcement Officers' Bills of Rights law to make amendments to the areas in which impede police officer accountability

2. Recommend that no city agreements be made in the immediate or in future collective bargaining contracts that would create restrictions, limitations regarding the implementation of disciplinary review boards, citizens review boards, or any other agreement that would impede full transparency or accountability efforts.

Implementation requires city administration to be aware of the recommendation during current and future collective bargaining negotiations.

Example of House Bill that addresses issues of subpoenas and levels of disciplinary authority: A bill that allows cities to not be grouped together but allows local governments and citizens to operate independently regarding citizen boards and oversight.

The Virginia Senate introduced a wonderful bill ([SB5035](#)) that gives localities the ability to create civilian oversight with subpoena power and gives local governments the ability to determine what level of disciplinary authority is appropriate. It is broadly worded and meets the community demands that have been articulated for the need for localities to establish oversight particularized to their communities.

LE-5 RECOMMENDATION: REVIEWS OF DE-ESCALATION AND USE OF FORCE

Reviews are currently conducted on use of force or critical incidents involving officers.. The software used for those reviews and the reports which they generate are called “Blueteam.” LPD should incorporate the documentation of de-escalation factors in the response to resistance Blueteam submissions on response to resistance (also called use of force), as well as have de-escalation factors assessed in the formal review of all critical incidents by the Critical Incident Review Committee. De-escalation should be reviewed separately from use of force / response to resistance, and should be assessed in the formal review of all critical incidents by the critical Incident Review Committee, just as the Committee now reviews response to resistance.

Problem/ Proof:

GO 1991 – 02K Response to Resistance

Pain / Practical / Pragmatic:

Reviews and reports do not currently separate de-escalation reviews from those involving response to resistance (use of force).

Progress / Tracking:

Update GO 1991-02K

LPD report to Mayor / Council on status of reforms undertaken.

LE-6 RECOMMENDATION: ANTI-RETALIATION POLICY AGAINST COMPLAINANTS

LPD should create an explicit anti-retaliation policy prohibiting retaliation by officers and LPD staff against persons who make complaints. Such a policy is a necessary companion with the recommended robust plan for greater citizen participation, education, and assistance in the complaint process.

Problem/Proof:

Lack of General Order or LPD policy prohibiting retaliation against a person who complains of police misconduct by LPD officers or staff. Current General Order speaks to contact with a complainant but not to the issue of retaliation.

Pain/Practical / Pragmatic:

Citizens who suffer or witness police misconduct should feel free to file a complaint without fear of retaliation by the Lexington Police Department.

Progress Tracking:

New General Order will have to be implemented.

LE-7 RECOMMENDATION: LOOK BACK PERIOD FOR OFFICER DISCIPLINE

RECOMMENDATION

Look Back Period for Officer Discipline. Currently, the look back period for officer discipline is 5 years. The recommendation is that the look back period be an officer's entire career for the same type of conduct and behavior that violates department policy and procedure.

Practical/Pragmatic

Provides for enhanced discipline where and when necessary for certain behavior.

Provides the community assurance that officer conduct and behavior is paramount.

Precludes the "bad" officer from appearing on another department's payroll.

Gives incentive to officers to do the right thing knowing that improper conduct will be in the personnel file.

Pain

Will require a change to the Collective Bargaining Agreement.

Progress Tracking

Data collection and analysis on officer discipline will reflect the elimination of repeated violations of policy and procedure and certain conduct by same officer.

LE-8 RECOMMENDATION: ENHANCE INFORMATION IN POLICE REPORTS

Officers to document all encounters where a consensual or probable cause search was conducted in conjunction with field investigations outside the execution of search warrants and/or subsequent arrest. The requirement to complete documentation of each search shall apply to searches of persons, vehicles, land, buildings or property. Officers shall also document on the Field Investigation Form all circumstances of field investigative detentions where a person is handcuffed and not subsequently arrested.

Problem/Proof: Lack of data pertaining to police contact with the public that can be used for study and training purposes.

Pain: Additional information to be included in Field Investigation reports by officers and additional info that has to be captured and analyzed.

Pragmatic: Such will provide the type of data that is required to detect bias.

Progress Tracking: New General Order will have to be implemented.

LE-9 RECOMMENDATION: ENHANCE COMMUNITY RELATIONS

Officer to provide a business card with his or her name and telephone number and/or web address upon his or her encounter with any and every citizen in his or her duty role. The card will contain a link to the complaint and accolades site to allow for citizens to make both good and bad comments about his or her contact with that particular officer. This allows for on-going community input and not just when requested or for 2 hours on one day during the department accreditation process.

Problem: Public's perceived lack of transparency and trustworthiness by law enforcement.

Pragmatic/Practical: Requirement to provide business cards with officer name and complaint/compliment contact information gives officer incentive to be helpful and polite and gives public notice of recourse process.

Pain: Cost of printing business cards which is minimal and creating a dedicated website and phone line with monitoring, feedback and action.

Progress Tracking: New General Order will have to be implemented.

LE-10 RECOMMENDATION: REPORTS AND ANALYSES

Proposal (Recommendation):

Assess policing needs and reforms in Lexington and make regular reports to the Mayor, Council (including its Planning and Public Safety Committee), Chief of Police, and the media, with the goal of eliminating systemic racism. Analysis and reports in these areas:

1. Analyze and report E911 data - E911 office monthly report to Council / Mayor
2. Citizens Crime and Law Enforcement Survey (local) - One Lexington office
3. Victimization Survey (requires grant) - Office of Grants & Special Programs
4. Report on progress of recent reforms undertaken in LPD policies and practice - monthly from Chief of Police to Mayor / Council
5. Analysis and reporting on NIBRIS data furnished to FBI (with UK or ECU)
6. LPD report to public on historical data and patterns of bias: Work with local historians to undergo a review of their archives to uncover past patterns of bias and make an official report to the public. This would offer a more complete response to the Presidential Task Force on 21st Century Policing. It also educates current officers and Lexington residents about the hurdles they face in building trust with particular communities. For many outside of communities of color, the often violent and discriminatory policies of police forces prior to the 1970s have never been fully understood. The legacies of that behavior bleed into, not just the current concerns of these communities, but also possibly policies and practices that may be understood to now be race neutral but originated in circumstances that continue to impact policing in those communities.

Problem / Proof

Overview of relevant research: Dr. Gary Potter, Professor Emeritus, ECU College of Justice and Safety

Basic versions of 911 dispatch data : Bloomington, IN

(<https://data.bloomington.in.gov/dataset/calls-for-service-data>), Chandler, AZ

(<https://data.chandlerpd.com/catalog/calls-for-service-2020/>), and Hartford, CT

(<https://data.hartford.gov/Public-Safety/Police-Calls-for-Service-01012005-to-12312015/675m-3vbp>).

A more advanced 911 reporting system: Baltimore, MD (<https://data.baltimorecity.gov/Public-Safety/Calls-For-Service-Data-Lens/t3vg-dqh8>).

Citizens Crime and Law Enforcement Survey: The health department has recently done a similar survey, in Lexington (<https://www.surveymonkey.com/r/LFCHDEngagementSurveyENG>). That survey was part of an excellent report providing a comprehensive view of health issues (<https://lexingtonhealthdepartment.org/wp-content/uploads/2018/04/CHA-CHIP-2017.pdf>).

Also used by Louisville Metro and other cities:

LMPD: (<https://louisville-police.org/ArchiveCenter/ViewFile/Item/111>). Durham, NC

(<https://www.theiacp.org/sites/default/files/2018-08/2013DurhamPDCommunitySurvey.pdf>,

Lexington, MA

(<https://www.valorforblue.org/Documents/Clearinghouse/Lexington%20PD%20Sample%20Public%20Safety%20Questionnaire.pdf>) and from the IACP

(<https://www.theiacp.org/sites/default/files/2018-08/cops-w0743-pub.pdf>).

Practical / Pragmatic:

Dr. Potter reported national data; no Lexington data exists to show how LPD officers use their time, whether some 911 calls would be better handled by non-law enforcement agency, how Lexington citizens view crime, and other information sought by this recommendation. The LPD also has not made specific progress reports on police reforms currently underway nationally.

Most of these recommendations can be implemented immediately. The exceptions are the Victimization Survey, which require a grant application, and NIBRIS data analysis and reporting, which can be done in conjunction with UK (contact: Dr. Melynda Price or ECU (contact: Dr. Derek Paulsen). All of the surveys will require professional assistance for design and implementation, and LFUCG should seek the assistance of both UK, where professors have expressed interest (same contacts).

No legislative changes are necessary.

Progress Tracking:

Monthly / quarterly / annual reports to Mayor and Council

LPD should use the information to establish metrics related to officer assignments; handling certain types of calls; proactive policing throughout Lexington; etc. The Mayor and Council should use the information to reallocate funds from LPD to other agencies as the metrics suggest a need to do so.

LE-11 RECOMMENDATION: NATIONAL USE OF FORCE DATA COLLECTION SUBMISSION

Proposal (Recommendation):

Recommendation that the Commission require all law enforcement agencies in Lexington-Fayette County submit their data to the National Use-of-Force Data Collection.

A secondary recommendation for consideration is communicating the need to our Fayette County legislators to consider statewide legislation to make submission by KY law enforcement a requirement rather than a voluntary submission.

Problem/Proof:

There has never been a comprehensive data base to track use of force incidents on a local, state, and national level until July 27, 2020. On July 27, 2020 the FBI released for the first time ever to the public the National Use-of-Force Data Collection. This data has never been available before in this format. The data captures incident reports and/or zero reports for the time period January 1, 2019 – December 31, 2019. See below for background information.

<https://www.fbi.gov/video-repository/national-use-of-force-data-collection/view>

<https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2019-participation-data-for-the-national-use-of-force-data-collection>

<https://www.fbi.gov/services/cjis/ucr/use-of-force#FAQs>

Pain / Practical / Pragmatic:

On January 1, 2019 the FBI officially launched of the National Use-of-Force Data Collection. The National Use-of-Force Data Collection, the first of its kind, is an addition to the national data collections in the FBI's Uniform Crime Reporting (UCR) Program. Several national organizations over the years attempted to create such a data base but to date, there has been no mechanism for collecting nationwide statistics related to use-of-force incidents. Lacking a national data base some law enforcement agencies and states have developed their own use-of-force data collections for use at both the local and state level for those particular agencies and states. In February 2015 then FBI Director James Comey stated, "It's ridiculous that I can't tell you how many people were shot by the police in this country last week, last year, the last decade—it's ridiculous."

In June of that year, the Obama Administration set into play a new nationwide initiative to fill that void. In 2016 the FBI convened its first task force series of meetings that led to a pilot program consisting of volunteer agencies who began submitting their data in 2017. The FBI's National Use-of-Force Data Collection establishes a template that allows law enforcement agencies to more easily report all incidents that result in death, "serious bodily injury" or the discharge of a firearm.

“The opportunity to analyze information related to use-of-force incidents is hindered by the lack of nationwide statistics,” the FBI noted in its announcement of the program, calling it the first such “mechanism for collecting nationwide statistics related to use-of-force incidents” and promising it would “periodically release statistics to the public.” Section Chief Amy Blasher and her team have worked extremely hard to make this data collection a reality.

The National Use-of-Force Data Collection is supported by the FBI Criminal Justice Information Services Advisory Policy Board, International Association of Chiefs of Police, Major Cities Chiefs Association, Major County Sheriffs of America, the National Organization of Black Law Enforcement Executives, the National Sheriffs’ Association, the Association of State Criminal Investigative Agencies, Association of State UCR Programs and the Police Executive Research Forum.

The National Use-of-Force Data Collection is a voluntary submission data collection just as is data submitted to UCR. All Kentucky law enforcement agencies are currently enrolled, but in its first year of collection few submitted incident reports or zero reports.

Progress Tracking:

All Kentucky law enforcement agencies are enrolled into the Data Collection and many are working to convert from an enrolled agency to a participating agency. The National Use of Force Data Collection is a readily available way that can improve transparency and accountability.

**CATEGORY 3:
TRAINING, RECRUITMENT, & HIRING**

LE-12 RECOMMENDATION: HIRING AND RECRUITMENT

- 1) Recruit new officers for the Lexington Police Department and Fayette County Sheriff's office based upon the recommendations from the publication *Hiring for the 21st Century Law Enforcement Officer*

Recommendation:

<https://cops.usdoj.gov/RIC/Publications/cops-w0831-pub.pdf>

Recommended citation: Morison, Kevin P. 2017. *Hiring for the 21st Century Law Enforcement Officer: Challenges, Opportunities, and Strategies for Success*. Washington, DC: Office of Community Oriented Policing Services. Published 2017

Implementation requires policy changes within the Division of Police

Track progress by annual review of recruitment classes.

- 2) Expand identification and use of psychological tools. Specifically, tools that can identify racial implicit and explicit bias and any propensity toward violent behavior conducted by clinical psychologist or psychiatrist. LFUCG would be well served by hiring a consultant outside our system to enhance the current hiring and training of officers toward de-escalation practices and servant versus warrior mentality policing philosophy.

Psychological tools such as MMPI (test that assesses personality traits and psychopathology) or other assessment tools such as the Harvard Implicit Bias Test.

Implementation:

Requires Mayor, Council and budgetary changes to hire consultant. Also requires policy changes within the Div. of Police.

Review and implement consultant's findings and recommendations. Also, track recruitment and retention by how long your new hires stay, conduct periodic surveys measuring implicit and explicit bias and continue to conduct performance measures throughout probationary period and beyond.

- 3) Broadening the recruitment for the Lexington Police Department and Fayette County Sheriff's office beyond local community and state efforts to include employment postings at culturally diverse fraternities, sororities, and historically minority educational institutions throughout the United States. With this recommendation it is expected that additional cultural competency training would be required for new hires from other states.

Implementation requires: Research of culturally diverse fraternities, sororities, and historically minority educational institutions beyond the normal regional area. Policy changes to the Div. of Police and redistribution of training funds or additional funds to accomplish objective.

Track progress by monitoring the retention and success of new hires.

- 4) Examine and review the makeup of the oral board panel used in the interview process to ensure inclusion of culturally diverse and high crime neighborhood members.

Implementation requires review of current oral board panel.

Track progress not required.

- 5) LPD create a “diversity committee” to help with recruitment composed of both department personnel and community members.

Recommendation from Mr. Dunn using LPD diversity report from 7-20-20; International Association of Chiefs of Police (IACP) (2007); Office of Community Oriented Policing (the COPS office) Community Collaboration Toolkit; LPD Organizational Chart and Interviews: Chief Weathers, Bryan Maynard

Implementation requires having a department that reflects the community it serves helps to build community trust and confidence, offers operational advantages, improves understanding and responsiveness, and reduces perceptions of bias”

Caucasians currently make up roughly 89% of the LPD (African descent 8%, Hispanic 2%, Other 1%). The Lexington Police Department’s racial demographics do not mirror the racial demographics of the diverse population of Lexington- Fayette County that it serves.

Tracking progress towards this goal will be evident by monitored recruitment budget and efforts. The newly formed Commission on Racial Equity will review LPD’s training academy annually. LFUCG should increase recruitment budget in FY 21-22 through additional or reallocated funding.

- 6) LPD should incorporate a minority participation goal for the LPD Explores Program to mirror Lexington demographics.

Recommendation from Mr. Dunn using LPD diversity report from 7-20-20; International Association of Chiefs of Police (IACP) (2007); Office of Community Oriented Policing (the COPS office) Community Collaboration Toolkit; LPD Organizational Chart and Interviews: Chief Weathers, Bryan Maynard

Implementation requires having a department that reflects the community it serves helps to build community trust and confidence, offers operational advantages, improves understanding and responsiveness, and reduces perceptions of bias”

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Tracking progress towards this goal will be evident by monitored recruitment budget and efforts. The newly formed Commission on Racial Equity will review LPD's training academy annually. LFUCG should increase recruitment budget in FY 21-22 through additional or reallocated funding.

- 7) LFUCG should increase funding for LPD recruiting effort to ensure a wider pool of candidates.

Recommendation from Mr. Dunn using LPD diversity report from 7-20-20; International Association of Chiefs of Police (IACP) (2007); Office of Community Oriented Policing (the COPS office) Community Collaboration Toolkit; LPD Organizational Chart and Interviews: Chief Weathers, Bryan Maynard

Implementation requires having a department that reflects the community it serves helps to build community trust and confidence, offers operational advantages, improves understanding and responsiveness, and reduces perceptions of bias"

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Tracking progress towards this goal will be evident by monitored recruitment budget and efforts. The newly formed Commission on Racial Equity will review LPD's training academy annually. LFUCG should increase recruitment budget in FY 21-22 through additional or reallocated funding.

- 8) Increase the number of police officers who reflect the communities they serve.

Research site: www.joincampaignzero.org/solutions#representation

Implementation: requires developing and publicly reporting a strategy and timeline for achieving a representative proportion of police officers who are women and people of color through outreach, recruitment and changes to departmental practices.

Track progress by annual review of the success of minority recruitment.

- 9) Create a citizen survey regarding crime issues and the police department to assess what citizens think about crime problems and enforcement. Utilize the survey results for determining hiring needs.

Recommendation from Dr. Potter and referencing Center for Urban Initiatives & Research
https://city.milwaukee.gov/ImageLibrary/Groups/cityFPC/Reports/150122_Police_Satisfaction_Survey.pdf

Implementation requires a survey to be fielded periodically to the community to gauge their experiences and perceptions of the crime problems and enforcement in an effort to reflect hiring needs based on community input.

Track progress by sharing survey results with Mayor, Council and Community.

LE-13 RECOMMENDATION: TRAINING AND EVALUATION

(1) Proposal (Recommendation): Long term plan for reduction in Bias

LPD should create a long-term plan to train officers to reduce the effects of implicit bias through robust anti-prejudice habit breaking interventions.

Problem/Proof:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3603687/>

Pain/Practical/Pragmatic:

We are subject to a sustained bombardment of racial stereotypes and racist imagery. That cannot be undone in a singular training. Studies on the benefits of implicit bias training have been unclear. What these studies do show is that bad implicit bias training can actually have the opposite effect of what the training intends. There is an increased call for interventions that reduce the habits/shortcuts that make of implicit biases by teaching individuals how to break prejudiced behaviors. LPD has already recognized the negative impact that implicit biases can have on procedure and community relations. Creating a more detailed program that would extend beyond the training academy and across the early years of the officer's career would only strengthen what has been started. We are subject to a sustained bombardment of racial stereotypes and racist imagery. That cannot be undone in a singular training.

Progress Tracking:

The program should be developed by a psychologist with expertise in this area.

(2) Proposal (Recommendation):

Officer training should include a course on the history of race and policing in the U.S. that also includes local history. Educating officers on this history could provide a historical context for current tensions and trust among Black residents and law enforcement officers.

Problem/Proof:

<https://www.wusa9.com/article/features/producers-picks/mpd-education-black-history-class-for-officers/65-5312efbe-4939-47ea-9465-1c23c4c17d46>

Pain/Practical/Pragmatic:

This policy was implemented in D.C. in 2018. Statement from Chief of Police: “Police Chief Peter Newsham said the museum’s exhibits force officers to confront ugly moments in the history of policing. “People who were supposed to serve and protect had played in the enforcement of discriminatory, racist and unjust policies and laws,” Newsham said. “The museum includes very honest and poignant stories of the role that policing played in some of the historical injustices in our country.” Washington Post (April 13, 2018)

https://www.washingtonpost.com/local/public-safety/dc-police-to-learn-black-history-as-part-of-new-training-program/2018/04/13/92920070-3f55-11e8-8d53-eba0ed2371cc_story.html

Progress Tracking:

This course should include, similar to those in DC and Chicago, tours of historic neighborhoods and local history museums to reinforce the role of police officers in upholding discrimination in the history of the city and include the roots of the development of policing in the context of chattel slavery.

(3) Proposal (Recommendation):

LPD and the Fayette County Sheriff’s Office should adapt a specific screening for racial bias in candidates.

Problem /Proof:

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4389587/>

This recommendation came to the committee from Dr. Potter after a query by Judge Scorsone about the availability of such screening. (Email 7/16/2020)

Pain/Practical/Pragmatic:

“It is now widely accepted that all people hold biases. What is relevant in the screening of law enforcement officers is the nature and degree of these biases. In his research on the effectiveness of international business managers, researcher Robert Hogan developed the concept of “global mind-set,” which he defined as open-mindedness, in contrast to narrow-mindedness and inflexibility.¹³ Similar findings from psychology reveal a continuum of cultural competence with important skills like empathy, tolerance, openness, flexibility, and self-monitoring. Other researchers in the field have proposed that multicultural competence has three components: attitudes and beliefs, knowledge, and skills.¹⁴ The importance of these factors are corroborated by the research on implicit bias indicating that automatic bias can be interrupted through awareness (e.g., self-reflection and self-monitoring), motivation (e.g., empathy), and ability (e.g., cognitive control).

Psychologists Casey Stewart, David Corey, and Sandra Jenkins have applied this body of knowledge to the psychological screening of law enforcement officers.¹⁵ The authors acknowledged that the existing California Peace Officer Standards and Training (POST) psychological screening dimensions address many of the elements linked to the cultural competence continuum (e.g., emotional stability, flexibility, and adaptability), especially the social competence dimension, which includes attributes like empathy and tolerance.¹⁶ However, Stewart and his colleagues asserted that cultural competence was inadequately covered by the existing 10 dimensions. Hence, they proposed an 11th dimension: multiculturalism, defined as the recognition of how cultural factors (e.g., race, ethnicity, language, sexual orientation, gender, age,

Progress Tracking:

This should be assessed as part of the regular evaluation of bias training by external reviewers with expertise suggestion in prior recommendation. Within the next 18 months, LPD and the Sheriff's Departments should identify an appropriate screening to be reviewed by existing boards for approval and external review by reviewers with expertise in this area.

(4) Broad analysis of stored BWC footage to assess for patterns of bias that may not be evident in current review procedures. This big data analysis could assist with refining training procedure on bias and other issues where the departments feel they can improve officer behavior.

Problem/Proof:

<https://www.sciencemag.org/news/2020/03/meet-psychologist-exploring-unconscious-bias-and-its-tragic-consequences-society>

Pain/Practical/Pragmatic:

The study cited focused on traffic stops which is the most common form of police citizens interactions. ““You can see how the justice system plays out in day-to-day language and social interaction,” says Rob Voigt, a computational linguist at Stanford who took part in the project. Both black and white police officers used similar disrespectful language with black motorists, which tells Eberhardt that although some of that behavior may be racist, most probably arises from unconscious patterns that somehow get transmitted during training or fieldwork. “It’s one of the things we want to study more,” she says.

Even before knowing the roots of the behavior, Eberhardt’s team worked with the police department to change it by creating role-playing exercises to train police to conduct traffic stops more respectfully. Nowadays, Oakland’s officers make stops only for documented reasons and ignore minor violations such as double parking. As a result, the number of traffic stops dropped by nearly half from 2016 to 2018, and stops involving black drivers dropped by 43%.” See link above.

Progress Tracking:

This kind of analysis could be done quickly. It might also be a necessary precursor to some of the suggested changes in training policy to see where the areas of concern are for LPD and Fayette County Sheriff.

(5) Conflict mediation / resolution training: All active police officers must take and complete annual "Conflict Mediation and Resolution" certification courses, assessments and continued education (in addition to de-escalation training courses).

(6) Field Training Officer Refresher Course: A refresher course shall be provided by the Training Academy for FTO's every year as noted in this article: https://www.nbcnews.com/news/us-news/one-roadblock-police-reform-veteran-officers-who-train-recruits-n1234532?cid=sm_npd_ms_tw_ma

(7) Officer Education online with ECU: LPD should partner with ECU to provide an opportunity to bridge the gap between the associate degree provided by BCTC for Officers and Sergeants who are interested in obtaining a bachelor degree through the completion of an online police studies program at ECU.

Problem/Proof:

These final three recommendations were submitted by committee members (two of them by the LPD representative) to cure gaps in training.

Practical/Pragmatic:

Conflict mediation and de-escalation of volatile situations are a recurring part of policing. Veteran officers continue to train, despite lacking refresher training and sometimes after having problems of their own. And LPD officers need an avenue for continued education.

Progress Tracking:

LPD training program should be updated to address these issues.

**CATEGORY 4:
STRUCTURE AND STAFFING**

LE-14 RECOMMENDATION: OFFICER/OFFICE OF ACCOUNTABILITY, MONITORING, & EQUITY

Abridged

Category: Law Enforcement & Justice

Sub-Category: Structure and Staffing

Recommendation: Officer/Office of Accountability, Monitoring, and Equity

Lexington(LFUCG) must develop and fully implement a position, office, or agent with the primary intent and function of monitoring LPD activity and other sectors of the justice system. The person in this position should have the capacity to analyze and gather data to identify any trends, methods, policies, or conditions that may indicate racial disproportionality, discrimination, or inequity. Data and activity to be regularly assessed, but not be limited to, inordinate presence in a particular geographic footprint of the city, use of force, body worn camera footage, personnel issues/complaints, convictions and/or other metrics necessary for thorough and timely identification of inequitable practices. This person will also work to coordinated various data strategies by law enforcement, the Administrative Office of the Courts and those in the justice sector to allow for systemic analysis and independent data as the foundation for future policy decisions. This office will be reported regularly to the Council and make their findings accessible to the public using various print and online formats.

Unabridged

Category: Law Enforcement & Justice

Sub-Category: Structure and Staffing

Proposal (Recommendation)

Officer/Office of Accountability, Monitoring, and Equity

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Problem/Proof

- <https://www.sciencemag.org/news/2020/03/meet-psychologist-exploring-unconscious-bias-and-its-tragic-consequences-society>
- Seattle Office of Police Accountability <https://www.seattle.gov/opa/about-us/frequently-asked-questions#doesopaengagewiththecommunity>
- LFUCG/FOP CBA
- 21st Century Policing Implementation Guide (pgs 9-19)

Pain/Practical/Pragmatic

-The study cited focused on traffic stops which is the most common form of police citizens interactions. ““You can see how the justice system plays out in day-to-day language and social interaction,” says Rob Voigt, a computational linguist at Stanford who took part in the project. Both black and white police officers used similar disrespectful language with black motorists, which tells Eberhardt that although some of that behavior may be racist, most probably arises from unconscious patterns that somehow get transmitted during training or fieldwork. “It’s one of the things we want to study more,” she says.

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- Currently, there exists no effective, autonomous, objective, or civilian position that provides oversight to police activity. There has been an ongoing and pervasive community cry and need for an objective auditor and independently review of LPD. This position, office, or component would be the response to the ineffective practice of “police policing police”.(see current incestuous structure)

Progress Tracking

(This kind of analysis could be done quickly. It might also be a necessary precursor to some of the suggested changes in training policy to see where the areas of concern are for LPD and FCS)

- Potential Timeline
- October-November 2020- staffing and budget analysis
- January-July 2021- Exploration, Implementation, Hiring
- September 2021- Position established and filled
- January 2022- First State of Black Equity Report including LPD data analysis
- Quarterly departmental analysis to council and administration and annual public report.

LE-15 RECOMMENDATION: 911 DIVERSION PLAN – PILOT PROJECT

Goal: To direct calls pertaining to individuals with Mental Health, Addiction and Homelessness issues to direct services and to avoid incarceration and hospitalization.

- 1) Analyze 911 calls to detect patterns and concentrations of calls pertaining to mental health, addiction and homelessness issues.
- 2) Train 911 dispatchers as to calls that can be appropriately handled by non-law enforcement/or fire department.
- 3) Retain the services of a para-medical and a social worker to serve as a team to respond to cases that the dispatchers believe may be handled by non-law enforcement/or fire department.
- 4) Deploy the new response team during the targeted time slots and in the selected geographical area.
- 5) Collect data as to number and type of calls, manner of response and outcomes.
- 6) Report to the Mayor and Council after a year of operations.

Problem / Proof:

<https://whitebirdclinic.org/cahoots/> (CAHOOTS program in Eugene, Oregon)

Dr. Gary Potter, ECU criminal justice expert: Nationally, only about 1.2 to 1.4% of police contacts involve violent crime, consuming about 4-5% of police time.

Pain / Practical / Pragmatic:

Lexington Police Department has a paramedicine program which works well but it involves an armed officer going to the scene. 911 calls have not been analyzed to see how many of these calls could be handled with non-law enforcement personnel, such as social workers, drug abuse counselors, etc., 24 hours a day, 7 days a week.

Progress Tracking:

Either alone or in conjunction with a local university, the E911 program can analyze its calls, make reports to the Mayor and Council to show types of calls / responses / results (mental health, homelessness, substance abuse or intoxication, property crimes, violent crimes, domestic violence, etc.). The ECU College of Justice and Safety has professors and graduate students who can help to design the analysis and track the progress.

LE-16 RECOMMENDATION: SOBERING CENTER

Proposal (Recommendation):

LFUCG should develop a plan to create a sobering center including identifying and pursuing external funding such as grants and state and federal support similar to other program such as those in other cities noted below. A sobering center is a facility or setting providing short-term (4-12 hour) recovery, detoxification, and recuperation from the effects of acute alcohol or drug intoxication. This center would be a fully staffed facility used as an alternatives to jail and emergency departments

Problem/Proof:

Examples of cities which have sobering centers:

<https://soberingcenter.org/> (Austin, Texas)

<https://www.sccgov.org/sites/bhd/Services/Pages/Mission-Street-Sobering-Center.aspx>

Pain / Practical / Pragmatic:

Lexington lacks such a facility. Intoxicated individuals must be arrested before they can be assessed for alcohol issues.

Progress Tracking:

LFUCG Office of Grants and Special Programs (identifying, applying for, and tracking grants)

JUSTICE RECOMMENDATIONS (UNABRIDGED)

J1 RECOMMENDATIONS FOR THE OFFICES OF FAYETTE COMMONWEALTH'S ATTORNEY AND FAYETTE COUNTY ATTORNEY

Recommendations:

1. Both offices should look into implementing a program such as Vera's Prosecution and Racial Justice Program (PRJ), which publishes a guide to aid prosecutors seeking to conduct research into their offices' work and address any problems contributing to racial disparity the research uncovers. The guide is based on PRJ's nine years of experience as research partner with a number of district attorneys around the country.
2. Both offices should develop and require continuing education on the subject of racial disparity in prosecution and its negative effects on the community.
3. Programs should also be instituted that teach cultural competence, so that prosecutors can effectively interact, communicate and understand people across cultures.
4. The Fayette County Attorney's Office should consider broadening their diversion program to include more offenders by making diversion available for all first time offenders that qualify and any misdemeanor offender without charges over a 5 year span. They should also implement culturally component strength based behavior modification as an alternative to incarceration. The strength-based approach focuses on the positive attributes of a person or a group, rather than the negative ones.
5. The Fayette Commonwealth's Attorney Office should review their policies regarding Persistent Felony Offender charges, which can result in over-incarceration, which disproportionately affects Blacks and African-Americans. The discretion to bring these charges rests solely with the Commonwealth's Attorney Office.
6. The Mayor's/ Prosecuting offices should fund/ conduct a study to examine 1) how many people reached negotiated plea deals with prosecutors, 2) details on initial offers, 3) how these offers changed over time, and 4) if plea deals varied based on race of the person accused of a crime, prosecutor, or victim, and make findings public.
 - A.) This information would provide both prosecutors and the public with transparency in the use and effect of prosecutorial discretion.
 - B.) This study would provide prosecutors with insight into their office's practices and patterns.
 - C.) Data collection can lead to improved practices, fairer policies, more appropriate sentences and diminish racial disparities.

Problem/ Proof:

According to the Commonwealth of Kentucky Department of Public Advocacy, Black or African Americans make up only 15.6% of Lexington-Fayette County's population. 21.8% of Black or African Americans in Lexington-Fayette County fall below the poverty line. If there was a correlation between crime and poverty one could expect Black or African Americans to account for about 21.8% of crime across the board in Lexington-Fayette County. However, Blacks or African Americans currently account for 38.5% of the Department for Public Advocacy (DPA) Clients, 60.0% of Burglary 1st, 64.8% of Robbery 1st, 58.9% of Trafficking in Marijuana, 45.9% of Trafficking Controlled Substance, 65.0% of Wanton Endangerment, 73.7% of Possession of Gun by Convicted Felon, 81.3% of Juvenile Clients Charged with Class B, A, or Capital Offense, and a grossly disproportionate 100.0% of Juvenile Clients Transferred to Circuit Court to be Tried as Adults (Fayette) – FY20

Pain / Practical / Pragmatic:

Data collected by Damon Preston Public Advocate, show that Black and African Americans are charged disproportionately once they enter the justice system starting with juveniles up to adults.

Progress Tracking:

Use the DPA's statistical information to compare and track data.

J2 RECOMMENDATIONS FOR THE COURTS**Court Staffing:**

Court personnel should reflect the racial and ethnic background of the community and should have mandatory instruction on racial bias in order to better serve the needs of minority groups.

Juries:

Trial Judges should use all efforts to educate jurors on racial bias and to insure an unbiased jury panel. Peremptory challenges inject racial discrimination into the jury selection process. Prosecutors, defense counsel and judges should seriously consider elimination or modifications to these rules in order to insure representative juries.

Reducing probation terms:

Judges should recognize that lengthy periods of probation may serve to cause a piling on of longer sentences and result in over-incarceration. Probation, by design, is an important alternative to incarceration and should be encouraged. But courts should be wary of using probation as an automatic response to low-level offending, and should ensure that probation prevents incarceration rather than just delaying it. Currently, probation acts as a net-widener that unnecessarily expands the correctional system's reach to people who commit low-level crimes or who are low-risk and do not need to be under strict supervision.

SOURCES

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OPEN RECORDS REQUEST- CRIMINAL CHARGES DISPOSED OF IN CALENDAR YEARS 2015 TO 2019 IN FAYETTE COUNTY BY DISPOSITION CATEGORY, RACE, AND ETHNICITY

OPEN RECORDS REQUEST-PARTICIPANTS REFERRED TO FAYETTE COUNTY ADULT DRUG COURT.

Minority Reports

MINORITY REPORT: Law Enforcement Recommendations Executive Summary

Minority Report – Recommendation: A panel of civilians will be sworn in as a “Law Enforcement Agency” with limited jurisdiction to investigate informal and formal external police disciplinary complaints, a sworn civilian commission (SCC).

Objection – There were many citizen groups who have requested a Citizen’s Review Board to review complaints received against the Lexington Police Department. We do not believe anyone on the committee objected to that premise generally of reviewing cases of alleged abuse by the police, and to be reviewed by citizens not associated with the police department. As one committee member stated, it’s healthy and promotes support for law enforcement.

However, there were a few concerns expressed by those who ultimately objected to or disagreed with this proposal as written and find that there are aspects of the proposal that would cause issues with current KRS Law, with the council, and it would ultimately be difficult to pass as written.

The below concerns outline our objections:

1) The legal authority for the mayor to swear in a group of citizens as a “law enforcement agency”. The law enforcement agencies listed (LPD, UKPD, FCSO, KSP) are all official agencies with law enforcement power, who attend weeks and months of on going training to learn about the law, especially 4th (search and seizure), 5th (right against incrimination) and 6th (right to an attorney) Amendment implications, how to investigate a case, standards of proof – probable cause and beyond a reasonable doubt, etc. So it was not clear in the recommendation who would be responsible for the training of the proposed members, what they would be trained to do, and what power they would have. Learning and understanding how to investigate a potentially civil charge (that would result in formal discipline of an officer) and possibly a criminal charge (which could result in taking an officer’s liberty), and being responsible for knowing the hundreds of general orders and criminal statutes, is a very serious matter that individuals are extensively trained to do. From that, would this group be under the legal umbrella of LFUCG? For example, if a complaint was filed against any of the members or the SCC sued for harassment or rights violations during their investigations, does the city take on this legal responsibility and represent them in court? Who would be responsible for overseeing their work to ensure they were legally requesting the right documents? Some documents in an investigation can only be obtained by a subpoena, a grand jury subpoena in a criminal investigation, a search warrant, or a court order. So, not only would this proposal give additional authority that the PIU does not have, there would need to be someone responsible

for training and oversight of these individuals to make sure they were not obtaining documents improperly.

2) There could be a possibility that conflicting information can potentially harm or interfere with the prosecution of a criminal case. If the SCC group is investigating a possible crime, any information obtained from that investigation may need to be provided to the officer in discovery. That includes any conflicting statements made to the PIU unit and the SCC. Conflicting statements would play into the credibility of those witnesses and affect the outcome of a case. In addition, this group of citizens involved in the investigation could potentially become witnesses at trial, testifying as an investigator about collecting information and interviewing witnesses and subject to extensive cross-examination. We believe this is a lot of responsibility for a group of citizens who will be operating on an unpaid/volunteer basis, and the jury would take that into consideration as to their knowledge and expertise.

It is our understanding that the Disciplinary Review Board gets the full investigation of the PIU, all statements, documents, and evidence to review to decide what discipline, if any, should be taken. Adding the civilians to the Disciplinary Review Board would allow them to review all the documentation, ask questions, suggest additional evidence/information if requested, and fully participate in the process. Because the investigation is conducted by those already trained to do so, we believe that the information collected would be more complete than if a group of civilians were tasked with doing so.

3) Numerous oversight groups were mentioned during these commission meetings – Ethics Commission, the KY Bar Association, and the Judicial Oversight Committee. These committees all have citizens on the board, and have limited “investigative” powers. None conduct investigations for potential criminal penalties. We believe the placing of citizens in the role of essentially “prosecuting” cases of alleged abuse is not ideal. Police work is difficult, complex and in many cases comes with split second decisions based on years of experience and training. In addition, there are technological, bureaucratic and legal issues galore to consider. The community would be best served by having someone with training and / or experience to do the job well. Furthermore, Fayette County juries who are tasked with deciding criminal and civil matters don’t conduct their own independent investigations. Given the gravity of the situation, we are concerned with giving a group of citizens more power and ability to conduct “investigations” than other, already established, commissions, boards and juries of other like professions.

4) Because we did not have the ability to fully discuss other citizen review boards – those that were successful and those that were not, we are in favor of a review of other boards in other locations to determine what would work under our current government/LPD structure. Such a review should take into consideration our statutes and our LFUCG rules and regulations, to

provide a good, working board that serves the needs and desires of those that requested it. What we do not want is for council to say this current model was not possible and then we would be back to square one without any desired result for the citizens who requested it.

5) If a Citizen's Review Board is determined to be the best route then the recommendation should be just that – ask for council to support changes to KRS to allow for Lexington to pursue a Citizen's Review Board format. Once the law is changed to allow such a review board, then trained and experience persons can be hired to delve into the facts and legal issues which can present the case to the Disciplinary Review Board and ultimately to the council. Leaving the investigation and prosecution to a team of three citizen volunteers with limited, if any experience, makes it too much of a challenge to overcome

These objections are supported by the following:

Mrs. Briana Persley

Mrs. Kimberly Henderson Baird

Ms. Diane Queen

Judge Ernesto Scorsone

Sheriff Kathy Witt

Assistant Chief Brian Maynard

MINORITY REPORT: Law Enforcement Recommendations Executive Summary

Minority Report – Section 2: Monitoring and Accountability – Recommendation: Enhance Policies on Body Worn Cameras

- 3) BWC Use Assessment and Report. Officers should be required to review a random selection (between 10%-25% depending on the reason) of their own BWC on an ongoing annual basis for purposes of performance review, promotion consideration, during probationary periods, or when officer is subject to any discipline with such being conducted with an outside "Coach" that is versed in implicit bias detection and/or with supervisors that have received annual implicit bias training from an outside source/coach with results of review documented in report form.

Objection – We understand and appreciate the need and concern for this recommendation, however, this request is not practical for several reasons. There are hours of footage that is captured on a BWC pending call volume and days the officer works each week. For a "Coach" to review data ahead of time in order to identify and know what to "coach" on would cause at minimum a "Coach" to be assigned to every squad. That would require 36 "Coaches" for just

patrol and a minimum of 67 “coaches” be assigned to cover the entire Lexington Police Department. In addition, a patrol officer would either be pulled one day out of the four that they work each week to review their BWC videos with the “coach” or have to report on overtime to make this happen. This would cause severe staffing and or overtime issues with our current staffing levels and patrol assignments. We will note that supervisors, that being Sergeants, Lieutenants, Commanders and Assistant Chiefs, already review several BWC videos every week and address issues that they observe. If an officer has a formal or informal complaint regarding their actions then even more BWC video is watched so there are “coaching” reviews already being done by supervisors, just not to the level of 25% as required with this recommendation. We do agree that a management level of implicit bias detection training would be beneficial and current supervisors could utilize that training while reviewing BWC videos and address concerns appropriately that are observed during such reviews.

- 5) Decrease officer discretion to turn off or not activate BWC on the basis of “Officer Safety” and “witness reluctance to be recorded”, which will be scrutinized as to its validity prior to imposition of any discipline for that failure to ensure the reasons are truly as stated.

Objection on Officer Safety – LPD sworn personnel understand the importance of having the BWC on and we will emphasize that all personnel want them on. However, there has to be discretion with Officer Safety when an officer is confronted with an immediate threat and/or response. When an officer has to choose between drawing their weapon, advising radio of the immediate threat or response they are being faced with, and activating their BWC, the officer only has two hands and the first two actions have to take priority for not only the officer’s safety, but in many times the public’s safety as well. Decreasing this option is impractical in a world where life and death reactions and decisions have to be made within a mere half second or so.

(Continued) Objection on witness reluctance to be recorded – We submit that there are times when the BWC should not be activated due to witness reluctance to be recorded and provide a statement due to the information being provided far outweighing the need to be publicly reviewed on BWC. This is also one recommendation that would potentially do more harm than good on the practical application side. As noted during our committee discussions, the Commonwealth Attorney’s Office has had a witness in a murder case that absolutely refused to speak to officers unless the recording was turned off. This individual was the sole witness who watched the murder occur, and was completely terrified to talk with the detectives. If that person realized the detectives had secretly recorded them, because we would have to have turned over the recording to the defense, then they would not have trusted the Commonwealth Attorney’s Office nor the detectives, and would have refused to participate in the case because the defendant saw them after the murder and they were fearful of

retaliation. This occurs many times when officers arrive on a scene of a crime, people do not wish to talk to police or “snitch”, but officers can generally get someone to speak to them anonymously if not recorded (similar to Crimestoppers). They won’t end up being a witness but that person can provide investigative leads to solve cases and provide an opportunity to locate other witnesses who will testify.

9) Increase timeframe in which department maintains non-evidentiary BWC recordings to a period of not less than 60 days and increase timeframe in which citizens have to file complaints to a like period of time.

Objection – LPD does not have a maximum time period to file a complaint from the date of incident. We do store non-evidentiary BWC video data for a period of 30 days. After the 30 days, that data is deleted as part of our retention schedule in accordance to KRS. The deletion at this point was set in order to help maintain costs associated with data storage. Changes in the retention schedule would financially impact the department.

These objections are supported by the following:

Mrs. Kimberly Henderson Baird

Sheriff Kathy Witt

Assistant Chief Brian Maynard

MINORITY REPORT: Law Enforcement Recommendations Executive Summary

Minority Report – Section 4: Structure and Staffing – Recommendation: To direct calls pertaining to individuals with Mental Health, Addiction and Homelessness issues to direct services and to avoid incarceration and hospitalization. Create a pilot project like CAHOOTS in Eugene, OR: Analyze 911 calls to detect patterns and concentration of calls pertaining to mental health, addiction, and homelessness issues. Train 911 dispatchers in how to direct those calls to appropriate non-law enforcement or fire department personnel. Use a team of paramedic and social worker to respond to such cases. Collect data on number and types of calls, response and outcomes. Report to Mayor and Council after one year of operation.

Objection – We object to this recommendation on two fronts. 1) If such a recommendation includes the reallocation of Public Safety Funds from the police department to other agencies accordingly then we do not support this proposal. 2) Lexington Fire developed their Paramedicine Program in 2017 as a way to provide services in a holistic approach through home visits, education and individual assessments on not just a short term solution but looking at the long term problem solving needs for folks that are high consumers of E-911 services. Through funding with an initial grant and now public funding supporting the program it incorporates two firefighters and a police detective working as a team to navigate the needs of our most

vulnerable residents to get them the help they need for the best overall outcome. We firmly believe that by adding a social worker to this team and providing opportunities to increase the number of our paramedicine teams available to handle calls for service, the paramedicine program, which is already grounded in our community with defined community partnerships, would continue to excel. We firmly believe that if the Paramedicine Unit was able to present their current operation to the committee during our meetings then the paramedicine program would have been recommended over the CAHOOTS suggestion.

These objections are supported by the following:

Sheriff Kathy Witt

Assistant Chief Brian Maynard