

Charlottesville Police Civilian Oversight Board Meeting

May 11, 2023, at 6:30 PM City Space (In-Person Meeting)

Agenda

I. Call to Order

II. Announcements

III. Approval of Agenda

IV. Approval of Minutes

V. Introduction of Executive Director Inez Gonzalez

VI. Public Comments (First)

VII. Status of Complaints and Review Requests

VIII. Training Module: Review Hearings

IX. Preparation for Review Hearing

X. Bias-Based Policing Recommendation

XI. Board Commendation for Captain Durrette

XII. Public Comments (Second)

XIII. Adjournment

Charlottesville Police Civilian Oversight Board Policy Recommendation

February 10, 2023

Revision of the Definition of Biased-Based Policing in General Order 06-2

Legal Authority for the Board's Recommendation

Sections 2-452(c)(4) Section 2-462(a) of the Charlottesville City Code grant the Charlottesville Police Civilian Oversight Board the authority: "...To investigate policies, practices, and procedures of the Department and to make recommendations regarding changes to such policies, practices and procedures..." The authority of municipalities to grant such powers to oversight organizations is found in VA Code 9.1-601(a)(4).

Provisions of the Bias-Based Policing General Order

Charlottesville Police Department General Order 06-02, Bias-Based Policing¹, was issued on August 8, 2019. The aim of the policy is stated as: "The Charlottesville Police Department insists that citizens will only be stopped or detained when there exists reasonable suspicion to believe that they have committed, are committing, or are about to commit a violation of the law..." Further, "The purpose of this policy is to unequivocally state that biased-based policing in law enforcement is unacceptable." The policy goes on to affirm the constitutional rights of all individuals to equal protection, stating that despite Police responsibilities to proactively enforce the law, the CPD must protect the rights of all citizens "regardless of race, creed, color, ethnicity, sex, sexual orientation, physical handicap, or religion."

The Order further specifies approaches to assuring that bias-based policing does not occur, including ongoing training for officers in "courtesy, cultural diversity, laws of search and seizure, and interpersonal communication skills", as well as training on the law related to stops, searches and detentions. The Order finally specifies that citizen complaints related to bias-based policing be investigated by the Internal Affairs Department, and includes an explicit prohibition against retaliation against, or harassment of, individuals who file such complaints.

Areas of Concerns Related to the General Order

1. Definition of Bias-Based Policing. While the Order recognizes the need to preserve the rights of citizens, the definition of what constitutes bias-based policing is very narrow: "The detention, interdiction, or other disparate treatment of any person on the sole basis of their racial, ethnic status, or characteristics." From a practical standpoint, this appears

¹ <https://www.charlottesville.gov/DocumentCenter/View/708/400-05---Biased-Based-Policing-PDF>

to be a standard that is almost impossible to fulfill, depending as it does on being able to prove the intent and mental state of an officer during an incident. In addition, it leaves out a wide range of circumstances where the treatment of an individual was influenced by, but not totally dictated by racial or other forms of prejudice. Surely, individuals deserve protection from unequal treatment whenever bias is a contributing factor.

2. Outcomes of Bias-Based Policing Allegations. Since the General Order was issued in 2019, no allegations of bias-based policing have been sustained². Sixteen such allegations have appeared in the IA reports spanning calendar year 2019 through September 2022. Of these, 13 were judged by IA to be “unfounded”, two were closed as “exonerated” and one was administratively closed when an officer left the CPD. It may be that in all 16 cases, the police had not, in fact been responsible for bias-based policing. However, as noted above, it seems more likely that in practice the definition of bias-based policing is just too narrow to be sustained under commonly occurring circumstances.

Alternative Approaches to Defining Bias-Based Policing

Difficulties with regard to the use of a bias-based policing policy that requires an officer’s actions to be “solely” based on race, ethnicity, etc. have been known since at least 2002, when the Police Executive Research Forum (PERF) published Racially Biased Policing: A Principled Response³. In their report, they pointed out that the “solely” requirement did not apply to a wide range of police activities that might be classified as discriminatory under then-prevailing law. Focus group research conducted for their report also found that this definition of bias-based policing to be confusing to both officers and civilians. While there is not space here to review all the relevant literature on the definition of bias-based policing, it is becoming clear that discriminatory behavior by police is rarely driven “solely” by conscious prejudice. Thus, a number of analyses, including the President’s Task Force on 21st Century Policing⁴ (2015) and Bias-Free Policing⁵ (2020) by the Law Enforcement Policy Center stress the need for a wholistic approach to addressing discriminatory policing, including public outreach efforts, improved officer training on the legal basis for police actions and implicit racial and cultural bias, and increased supervision and performance monitoring. In support of such wholistic approaches, there is a distinct tendency to move to a more nuanced and broader definition of what constitutes

² All statistics in this discussion were abstracted from monthly and annual Internal Affairs Reports provided by the Charlottesville Police Department. <https://charlottesville.org/1495/Internal-Affairs-Case-Data>

³ Friedel et al. (2001); <https://cops.usdoj.gov/ric/Publications/cops-w0172-pub.pdf>

⁴ https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

⁵ International Association of Chiefs of Police (2020) <https://www.theiacp.org/sites/default/files/2020-06/Bias-Free%20Policing%20January%202020.pdf>

bias-based policing. The Appendix provides a small set of example definitions, some of which have been adopted by Virginia municipalities.

Recommendation⁶

As a first step in revising the CPD's approach to addressing Bias-Based Policing, the Board urges the CPD to broaden the definition of what constitutes bias-based policing to be more consistent with current thinking on the nature of discriminatory police actions and to be more applicable to the situations addressed in the "real world" when evaluating citizen complaints.

⁶ This recommendation was approved by a vote of the PCOB at their February 9, 2023 meeting.

Appendix: Alternative Definitions of Bias-Based Policing

This appendix provides a number of definitions of bias-based and discriminatory policing that have been suggested by standards and accreditation organizations and that have been implemented by police departments in Virginia and other states. This is by no means an exhaustive listing; however, the definitions are generally representative of what is found during simple web searches on the key phrase “biased-based policing.” The definitions are presented first, followed by citations. The cited documents generally also describe comprehensive programs for addressing discriminatory policing.

1. Biased policing is defined herein as discrimination in the performance of law enforcement duties or delivery of police services, based on personal prejudices or partiality of agency personnel toward classes of individuals based on specified characteristics. Conversely, fair and bias-free treatment refers to conduct of agency personnel wherein all people are treated in the same manner under the same or similar circumstances irrespective of specified characteristics.

Bias-Free Policing (2020), IACP/LEPC

2. Biased policing is the application of police authority based on a common trait of a group. This includes but is not limited to race, ethnicity, national origin, religion, age, gender, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation, or language fluency.

Accreditation Standards (2021), Commission on Accreditation for Law Enforcement Agencies (CALEA).

3. Unlawful discrimination is any action that unjustly results in unequal treatment of persons or groups based on personal characteristics such as age, race, gender, color, national origin, ethnicity, creed, religion, or disability. Racial discrimination, sexual harassment, racial profiling, bias based policing, or any other form of unlawful discrimination, either by a specific act or omission, by or against any employee, is unlawful and will not be tolerated... Inappropriate behavior, even absent any specific intent of the actor, can have a discriminatory impact.

Regulation 201.General Responsibilities (2019) Fairfax County Police Department.

4. Employees shall not make decisions or take actions that are influenced by bias, prejudice, or discriminatory intent. Law enforcement and investigative decisions must be based upon observable behavior or specific intelligence. Officers may not use discernible personal characteristics in determining reasonable suspicion or probable cause, except as part of a suspect description.

5.140 - Bias-Free Policing. Seattle WA Police Department Manual (2019)

5. Bias-based policing - An inappropriate reliance on characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, economic

status, age, cultural group, disability or affiliation with any non-criminal group (protected characteristics) as the basis for providing differing law enforcement service or enforcement.

Harrisonburg, VA Police Operations Manual 314.1 (2018)⁷

6. Biased policing is the inappropriate consideration of specified characteristics in carrying out duties. Specified characteristics include, but are not limited to race, ethnicity, national origin, gender, gender identity, sexual orientation, socio-economic status, religion, housing status, disability, and/or age.

Virginia Beach Police Department Operational General Order 6.04 Biased Policing (2021)

7. Bias-Based Policing - A law enforcement-initiated action based on race, ethnicity, gender, sexual orientation, economic status, religious beliefs, age, or other bias rather than an individual's behavior or other information identifying the individual as having engaged in criminal activity.

Arlington VA County Police Department Directive 531.06 (2021)

8. Bias-Based Policing: When a CHPD member takes a law enforcement action or decides to provide or not provide police services, and that action or decision is motivated by discrimination on the basis of an individual's demographic characteristics.

Cleveland Heights OH Police Department Policy 401.1.1 (year?)

9. Biased Policing- The inappropriate consideration of specified characteristics while enforcing the law or providing police services. Specified characteristics includes, but is not limited to, race, ethnic background, national origin, gender, gender identity, sexual orientation, religion, socioeconomic status, age, disability, political status, or any other legally protected characteristics.

North Miami Beach FL Police Department Bias-Based Policing 1-02 (2022)

⁷ The same definition is used by the Danville, VA Police Department (Policy 401, 2021)

Resolution: Police Civilian Oversight Board Commendation for Outstanding Community Service

Whereas: The Charlottesville Police Civilian Oversight Board has been empowered to issue commendation to individuals who have provided outstanding service to the community (City Code XVI, Section 2-467)

Whereas: Major Latroy A. (“Tito”) Durette provided outstanding leadership to the Charlottesville Police Department as interim Chief during a period of difficult transition,

Whereas: Major Durette established strong lines of communication with the Board and its Executive Director, and sent a clear message that just and fair policing was a basic value of the Charlottesville Police Department,

Whereas: Major Durette afforded the Civilian Oversight Board unprecedented cooperation and support in the pursuit of its mission,

Therefore: The Charlottesville Police Civilian Oversight Board issues this Commendation to Major Durette for Outstanding Community Service and their thanks for his assistance and support.