RACIALLY JUST POLICING:

A Model Policy for Colleges and Universities

IN THE MIDST OF A NATIONWIDE CONVERSATION AROUND POLICE PRACTICES, it has become clear that we must reimagine and reform policing methods as a critical first step toward creating a more racially just society. Colleges and universities have a key leadership role to play in this effort. By updating and reforming institutional policies and practices around public safety on campuses, college and university leaders can ensure a safe working and learning environment for students, staff, and faculty.

For the last two years, the ACLU of Massachusetts and Bridgewater State University have collaborated to develop a policy designed to help colleges and universities reduce incidents of biased policing on campuses. Together with students, police officers, administrators, and more, we have crafted a model policy that centers reform, trust, training, and transparency. This policy affirms the ACLUM's mission to protect and defend civil rights and civil liberties; Bridgewater's dedication to racial educational equity and justice; and our shared commitment to providing pathways to equity in policing. We are proud of this partnership; when institutions like the ACLUM and Bridgewater come together, we create new opportunities for progress.

What follows are recommendations for structural reform, as well as best and emerging practices for building trust between police and the community on and around campus. Universities and colleges are unique learning environments, requiring careful consideration in order to strengthen and apply broad principles of racial equity and justice. This model policy lays out immediate and long-term steps our university and college communities can take to enhance both public safety and academic learning by ensuring racially just policing practices.

With gratitude,

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INTRODUCTION

EVERY YEAR, AT COLLEGES AND UNIVERSITIES in the Commonwealth and across the country, students, staff and guests of color are singled out for suspicion. After these incidents, the affected campus community members sometimes reach out to civil rights organizations like the American Civil Liberties Union of Massachusetts ("ACLUM"). At ACLUM, we have responded to an incident in which police cordoned off a university building for half an hour to question someone whom an anonymous caller identified as an "agitated Black male" with "a heavy backpack;" in fact, he was a university employee returning from the recreation center. We have responded to an incident in which police questioned a young Black woman after receiving a call that she was in an unoccupied dormitory (with an active dining hall) sitting on a dormitory couch in the room off of the dining hall and seemed "out of place;" in fact, she was a student. We have responded to an incident in which police stopped, questioned, and ultimately arrested a Black man while he was walking toward the campus gym; in fact, he was a basketball coach. These incidents, and countless others, unjustly required Black people to rebut a suspicion of criminality, instead of requiring the caller, dispatcher or officer to justify the suspicion. Crucially, by the time affected parties contact ACLUM, they have likely already suffered irreparable harm.

ACLUM, in partnership with Bridgewater State University ("BSU"), drafted this model policy to suggest a different approach, intended to prevent these injustices from happening in the first place. The policy is based on a recognition that not only do students and staff of color wish to prevent these incidents, and not only does ACLUM wish to prevent them, but so too do colleges and universities themselves. We have all come to recognize that the status quo has caused people of color to suffer repeat racial injustices at our institutions and that maintaining it will allow those harms to continue. We all need and want proactive solutions that can help stymie racial profiling and provide a starting point for real change. Racism is a public health issue that affects the emotional and mental health of those directly and indirectly impacted—and as with all health issues, prevention and early intervention are worth more than any cure.

Methodology

ACLUM and BSU started with the premise that racial profiling and other instances of racial injustice will continue to occur on campuses unless colleges and universities identify the problem and work toward structural solutions. To help identify problems and solutions, we surveyed presidents, police chiefs and diversity administrators from 27 Massachusetts public colleges and universities in September 2019 about their current anti-bias policies and practices. Eighteen schools responded either in writing or through

informal meetings. ACLUM also received input from the State University Council of Presidents and the Massachusetts Association of Community Colleges.

The responses demonstrated that colleges and universities are trying to provide a safe and supportive environment for all members of their communities through identifiable policies and practices. Responding institutions included diversity goals in their strategic plans and created committees and advisory groups to realize those goals, created non-sworn staff positions within police departments to respond to community needs, and administered implicit bias training to all faculty and staff members (though there was no uniformity to these trainings or information available about their effectiveness).

While these responses were buoying, they also revealed opportunities for improvement. Many responding institutions had difficulty defining, articulating or even acknowledging that people of color on campuses are too often treated as if they are "others" who do not belong. Some institutions, while recognizing feelings of alienation among people of color, seemed to attribute these feelings to characteristics of individuals of color, to stereotypes, or to the national dialogues around race—rather than to institutional policies or practices that do not account for the experiences of people of color. As a result, some respondents regarded the work of creating a culture of belonging as one of reinforcing group similarities and deconstructing barriers (e.g., explaining existing services and programs to students of color), rather than creating positive policies and

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practices aimed at recognizing and embracing unique experiences and rendering services in a manner that addresses those differences.

To understand how identified policies and practices work and affect student experience, ACLUM met with undergraduate, graduate and professional-level students at Harvard University, Greenfield Community College, and Bunker Hill Community College, among other institutions. Unfortunately, the coronavirus pandemic halted meetings with additional students.

These conversations with students, the college and university survey responses, the aid of police reform experts, and independent research (see "Selected Sources") helped inform our policy recommendations. These recommendations also drew upon the institutional expertise of the ACLU, ACLUM and Bridgewater State University. Subsequently, the recommendations were revised during the national conversations around policing that occurred in the wake of the police killing of George Floyd.

Approach for Adopting Recommendations

This model policy proposes statements of principles and recommendations, coupled with guidance on best practices to implement each recommendation. We encourage institutions to adopt these recommendations with the understanding that there is no "one-size- fits-all" solution to these issues. We recognize that differences in setting (e.g., residential versus nonresidential campuses), location (e.g., urban versus rural) and other factors may make wholesale adoption impossible. It is up to each institution to determine how best to adjust and adopt this model to fit their own structure and needs. The recommendations offer a framework on which to build a racially just policing model. The "best practices" go one step further; they provide a roadmap for implementing each recommendation and should form part of the policies and procedures of each institution's campus safety plan.

Our recommendations center on the following themes:

Community-driven policing. Community-identified needs as expressed by students, faculty and staff must inform

how public safety departments operate on campuses. This can only be achieved through continuous, open dialogue with community members. At colleges and universities, the need for communitydriven policing is especially acute because those communities will continue to change with each new generation that matriculates through the institution. Institutions must establish systems to ensure that policing addresses current community members' needs and expectations.

Establishing community expectations. University and college police departments must clearly articulate their purpose/mission to the campus community. Police should not aim to monitor or intervene in every dispute; their services should be limited to situations involving risks of physical harm to other person(s). This must be effectively communicated to the community, who should likewise be informed about what steps the police will take when activated—from the information that dispatch will solicit from a caller, to the department's post-encounter reporting systems.

Transparency. A lack of information about the operation of police departments allows dis-information and mistrust of police to fester. Community members must have access to the information necessary to determine whether police are working in a racially just manner. Police must also evaluate their own actions to be able to identify issues as they arise and appropriately address them. This internal evaluation should consist of regularly collecting and reviewing relevant demographic and outcome data, as well as providing bias training. This training should establish expectations that will, in turn, be incorporated into performance reviews. Further, police should not be expected to police themselves but rather should establish a commission made up of students, staff with subject-area expertise, and administrators to receive input from the community.

Reckoning with the history of policing. Police must reckon with the history of how modern policing evolved in some parts of the country and the discriminatory manner in which police have operated in communities of color from slavery to mass incarceration. That history and that reality affect the success of policing on campuses; it should not be ignored. Among other actions, officers should receive training on how encounters can affect individual community member's emotional and psychological well-being and how to deliver services in a

manner that recognizes that impact. Officers should work towards establishing professional relationships with community members, remaining open and providing answers to questions about stops and other actions

We hope that institutions—especially those that may not be able to adopt fully the recommendations—will use these themes, as well as the principles articulated throughout the report, as guideposts on their path to change. We hope aspects of this report will inform agreements (including contracts, mutual aid agreements, and memoranda of understanding) that institutions enter into with any municipal or private police forces that provide services to their campus, including by having any such agreements informed by, evaluated and discussed with community members. Specific proposals notwithstanding, this policy ultimately aims to point institutions in the right direction: achieving more welcoming and supportive campus communities, and lessening the occurrence and impact of biased incidents such as racial profiling.

These recommendations require varying levels of effort to implement. Some will demand additional funding, such as the development of a mental health services department or the restructuring of existing mental health services to operate as a first responder team. Some will require policy changes or program enhancements, such as training and awareness that will rely on leadership, coordination and nominal financial resources. Most, however, should not require increased funding. Instead, the recommendations are intended to take advantage of the college and university setting, drawing on the availability of faculty experts or relevant courses. Moreover, creative solutions and budget re-prioritization may go a longer way toward implementing the policies than increased funding. What this report strives to do by presenting the recommendations in this manner is outline options, reiterating that one size does not fit all; it does not fit all campus needs, institutional structures, or budgets and resources.

Importantly, ACLUM re-emphasizes that before enacting these recommendations, institutions should determine—in collaboration with their community members—what form campus public safety should take, and whether the maintenance of a police department, or the stationing of officers on their campus, is appropriate for their community. If an institution and its community decide to have police on campus, these recommendations offer a way forward for administrators to maximize a safe living and learning environment.

EXECUTIVE SUMMARY

This model policy is designed to help colleges and universities reduce incidents of biased policing, including racial profiling, on their campuses. It was developed over a period of two years in close collaboration with stakeholders, including students, administrators and police officers, at higher education institutions in Massachusetts. The policy proposes statements of principles and recommendations, coupled with guidance on

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best practices to implement each recommendation. It seeks to encourage institutions to determine, in conversation with community members, what circumstances warrant police presence,

intervention and action.
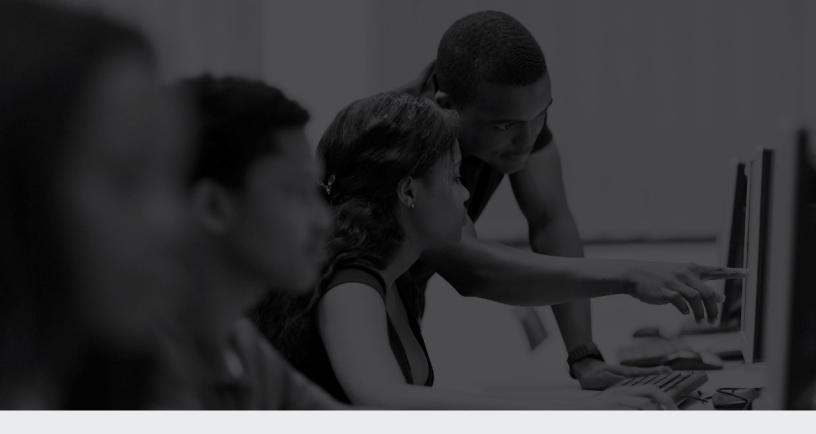

Summary of Recommendations

"College and University Support for Police Reform Initiatives." Colleges and universities should structure their first responder services in a manner that enables the police to limit its resources to instances or risks of physical harm to another and operate in a manner that is directly responsive to the needs and expectations of the community.

1. **Establish a Community Mental Health and Support Services Department** to provide first responder services for calls about individuals experiencing mental or behavioral health or substance-use issues.

2. **Establish a Community Oversight Commission or Advisory Group** with the authority to solicit community input, review police records and data (e.g., concerning racial disparities), investigate issues and recommend changes to police policies and practices.

"Building Trust & Legitimacy." College and university police departments should adopt policies and procedures that are designed specifically to eliminate instances—

whether actual or perceived—of biased policing, including racial profiling, and to address the diverse and dynamic needs of their campus community.

3. **Adopt and publish a police mission statement** that establishes that the practices of the department will not impede community members' physical, emotional and psychological safety and that police services will be delivered in an antibiased and equitable manner that takes into account the historical role of and tensions with policing in communities of color.

4. **Limit undue encounters and undue escalation** by requiring police to have and to articulate the specific bases for initiating encounters, by ensuring that all encounters are properly documented and regularly reviewed, by giving individuals stopped the information necessary to follow up after an encounter, and by using physical descriptors specific enough to identify an individual or particular group of individuals when communicating people suspected of crimes.

5. **Respond to "suspicious persons or activities" calls only when there is an objective, reasonable basis to believe that the deployment of police services is needed,** and develop protocols for dispatch (or their equivalent) on how to collect sufficient information from callers to ensure that officers engage with an individual based on objective information that can inform their assessment.

6. **Develop a community engagement** plan sufficient to ensure that the police department can operate in a manner responsive to the community-identified needs, including by evaluating the department on community engagement goals and indicators, and that the community receives updates on and are invited to discuss the department's work through live forums.

"Training & Education." College and university police departments should provide regular and continuous training to department personnel on bias detection and inclusivity, designed to help such persons minimize and self-correct both perceived and actual biases.

7. **Ensure that officers receive continual training on topics that prepare them to navigate issues unique to the campus environment as well as to respect issues of race, gender, sexual orientation, mental health, disabilities** and other factors that may influence a person's perception of, or reception to, police. Officers should be evaluated based on their implementation of this training.

"Transparency & Oversight." College and university police departments should strive to keep the community informed about their actions, providing regular opportunities for review to ensure that policies and practices meet the expectations, norms and values of the community.

8. **Regularly disclose and analyze data** on officers' encounters with community members in order to help the department and the community identify and address any racial or other disparities or the lack thereof.

9. **Develop and implement an interactive communications plan** that openly relays information about certain police activities in real time to the community; that ensures the department responds to concerns about specific practices, events or issues; and that provides a means for the community to review policies, practices, certain contracts and other pertinent subjects.

COLLEGE AND UNIVERSITY SUPPORT FOR POLICE REFORM INITIATIVES

Overarching Principles for College and University Support for Police Reform Initiatives

The university or college should commit to the following principles:

1. The purpose of the police department is, fundamentally, to ensure the physical safety of all community members equally and to respond where there exists a risk of violence or physical harm to members of the campus community; the engagement of police services should be limited to its purpose.

2. Colleges and universities should prioritize and protect the mental and emotional health of their students and other members of their community. The use of police officers to respond to mental and behavioral health crises and persons dealing with substance-use issues is generally inappropriate.

    a. Police are not mental health counselors, and despite best intentions, few police officers have the comprehensive training and skills needed to provide an ideal response to mental and behavioral health and substance-use related crises. Institutions should refrain from burdening the individual suffering the crisis with having to effectively communicate with, work with, and navigate help from an armed law enforcement officer.

    b. Universities and colleges have obligations under the U.S. and Massachusetts Constitutions, as well as the Americans with Disabilities Act, to take into account a person's physical and mental disabilities when setting policy, when effecting arrests and during other police encounters. See, e.g., *Gray v. Cummings*, 917 F.3d 1 (1st Cir. 2019). This obligation extends to the police that the institution employs or whose services it contracts.

3. Due to officers' unique role as first responders to violent or dangerous activity, the use of officers to arbitrate trivial disputes or disagreements over university resources (e.g. disputes over room reservations, noise complaints, lunchroom etiquette or annoying behavior) or to settle other non-violent disputes may be inappropriate. Those calls for service would be best handled by professionals specifically and specially trained to de-escalate and mediate the behavior in question.

4. Universities and colleges should understand and continuously monitor how their police department interacts with students, faculty, staff and other members of the community through the collection and analysis of demographic and outcome data. They should also monitor how students, staff, faculty and other community members perceive the department.

Recommendation #1: Community Mental Health and Support Services Department

Guiding Principle:

To the greatest extent practicable, police should act only as protectors of physical safety; as a matter of policy, police should not be used as first responders to engage with individuals experiencing a mental or behavioral health crisis or other non-violent issues where there is no reasonable basis to conclude that the individual poses a threat of harm to another person.

Best Practices:

1. The college or university's first responder services should include a community mental health and support services team of social workers (or their equivalent), clinicians, and other (non-lawenforcement) staff advisors. This team should operate independently of the police department.

2. The community mental health and support services team should have a dedicated, separate phone line and email account that community members may use to obtain mental health and support services.

   • Communications received through the dedicated phone line and email account should neither trigger police response nor result in a police report or after-incident involvement by the police department absent specific allegations involving a risk of physical harm to another person.

3. Absent a report of violence or of a non-speculative risk of physical harm to another person, calls for service involving mental or behavioral health or substance-use issues should be referred to and handled by officials in the community mental health and support services team.

4. Absent a report of violence or of a non-speculative risk of physical harm to another person, complaints about student-life activities (such as noise complaints) should be referred to and handled by officials in the community mental health and support services team.

5. Where there is a report of violence or of a nonspeculative risk of physical harm to another person, and the person exhibiting the reported behaviors has known or suspected mental or behavioral health or substance-use issues, officials in the community mental health and support services team should respond in order to support and guide police officials at the scene.

6. When responding to calls and complaints alone, community mental health and support services officials should be empowered to call in police as backup when needed but retain control of the scene even after police arrive, unless and until police intervention is necessary. When called, officers should intervene only when necessary to prevent imminent, physical harm to another person or, within the officer's discretion, at the request of the responding community mental health and support services official.

Recommendation #2: Community Advisory Commissions

Guiding Principle:

While acknowledging their own expertise, experience and dedication to the equitable administration of its services, police departments should be accountable to, learn from, collaborate with, and respond to the needs of the constantly changing and diverse campus community.

NOTE: ACLUM understands and acknowledges varying opinions about the college or university administration's

While acknowledging their own expertise, experience and dedication to the equitable administration of its services, police departments should be accountable to, learn from, collaborate with, and respond to the needs of the constantly changing and diverse campus community.

role in the daily operation of the police department. Some experts and scholars believe that administration should actively monitor and oversee the department's operation because a department should not be expected to police itself and should be held to account by a neutral, external party. But some experts and scholars believe that the department should act independently in order to alleviate the risks and appearance of police acting as a force of social control or to enforce certain standards of behavior. In recognition of these different views, we present two alternative best practices for implementing this policy recommendation. These approaches are not contradictory; both affirm the need for community input and a regular review of data for disparities with the aid of a third party. They differ as to who convenes the group, and what powers the group possesses to investigate allegations or patterns of misconduct. ACLUM recommends that universities and colleges implement Option 1. However, we recognize that, in addition to the aforementioned concerns, certain structural or contractual obligations may make Option 2 more feasible.

OPTION 1: OVERSIGHT COMMITTEE

Best Practices:

1. Police departments should not be independent of or operate separately from the university/college administration. Police departments exist to serve the campus community, and their effectiveness depends on the support and cooperation of that community.

2. Much as municipal officers are responsible to the town or city's governing structure, a college/ university administrator who directly reports to the president/chancellor (such as a vice-president of student affairs) should have the responsibility of acting as an external force of accountability for the police department and of monitoring its behavior.

3. Whichever administrator has charge of maintaining the external accountability of the department should establish a formal community oversight commission to assist the police department in developing crime prevention strategies and policies as well as identifying and addressing known or perceived policing issues.

4. The commission should develop a mechanism to solicit regular feedback from community members at large, such as surveys or town halls, about what their safety needs and concerns are, including concerns about fair and impartial policing (see Recommendation no. 4). This feedback should be used to inform policing priorities and to reform police policies or practices.

5. The commission should regularly and independently review the police department's data for issues of racial disparity in police encounters or actions, as well as received complaints (including the manner of their disposition) for common allegations or serious charges, including but not limited to racial bias or profiling. If any disparities or issues are found, the commission should conduct an investigation and develop solutions or recommendations, including revisions and/or modifications to existing policies or proposing new policies, for review by the department chief and administrator in charge of maintaining the external accountability of the department. Any findings and recommendations should be made publicly available and published on a website maintained by the department.

6. The commission should—at a minimum—include the chief of police, the university official in charge of maintaining the external accountability of the department, at least two students, two members of faculty with expertise in criminal justice or related topics, and two staff members. The university or college should consider adding a representative of civil rights organizations active on their campus. The commission should meet regularly, not less than twice each academic term.

OPTION 2: ADVISORY GROUP

Best Practices:

1. Police departments should not be independent of or operate separately from the university/college administration. Police departments exist to serve the campus community, and their effectiveness depends on the support and cooperation of that community.

2. Much like municipal officers are responsible to the town or city's governing structure, a college/ university police

department should report directly to the president/chancellor, or another administrator who directly reports to the president (such as a vice-president of student affairs). The president/ chancellor or alternate administrator should have the responsibility of overseeing the police department.

3. A formal community advisory group should advise the police department. The group should assist the police department in developing crime prevention strategies and departmental policies, as well as providing input on known or perceived policing issues.

4. The advisory group should develop a mechanism to solicit regular feedback from community members at large, such as surveys or town halls, about what their safety needs and concerns are, including concerns about fair and impartial policing (see Recommendation no. 4). This feedback should be used to inform policing priorities and to reform policy or practices.

5. The advisory group should regularly review the police department's data for issues of racial disparity in police encounters or actions. If any disparities are noted or found, the advisory group should assist in the development of solutions or recommendations when appropriate.

6. The advisory group should include the chief of police and representatives from each segment of the university community, including students, faculty, staff and civil rights organizations. The advisory group should meet as regularly as possible, preferably not less than twice each academic term.

Police departments exist to serve the campus community, and their effectiveness depends on the support and cooperation of that community.

BUILDING TRUST
AND LEGITIMACY

Overarching Principles for Building Trust and Legitimacy within the Campus Community

The police department should commit to:

1. Understanding and continuously evaluating its impact on the community in order to eliminate racial and other biases—whether perceived or actual—and ensuring that the department is meeting the community's needs and expectations.

2. Providing accountability and fostering integrity among officers in their dealings with colleagues and the college or university community in order to, in part, establish social trust with the community.

3. Being rooted in just and equitable practices and eliminating discrimination in policing.

    a. Departments should adopt and enforce policies explicitly prohibiting racial profiling and discrimination based on an individual's or community's actual or perceived race, color, ethnicity, gender identity or expression, sex, sexual orientation, disability, age, national origin, socioeconomic background, immigration or citizenship status, and/or other immutable characteristic(s) or physical trait(s). Profiling may be explicit or evidenced by statistically significant data showing disparate treatment.

        • Any departmental activity undertaken for the purpose of investigating or deterring unlawful conduct, or for rendering aid, should be justified by a legitimate public safety objective, e.g., prevention of violence or physical harm.

        • No police action may be justified solely on the basis of a person's or community's actual or perceived race, color, ethnicity, gender identity or expression, sex, sexual orientation, disability, age, national origin, socioeconomic background, immigration or citizenship status, and/or other immutable characteristic(s). Rather, such characteristics may appear in a timely, reliable, and detailed physical description of a person

suspected to have committed a particular crime and may—in combination with other factors— inform an officer's analysis of which individual(s) matches the detailed physical description obtained.

b. Racial profiling has placed communities of color in fear of unjustified or harmful police actions. Even where such barriers to trust, legitimacy, and effective policing are not necessarily due to the actions or inactions of a particular college or university's police department, that department must still work to overcome these barriers if they are to equitably serve all within their community.

4. Adapting their practices to best serve the broad range of races, genders, sexual orientations, languages, disabilities, life experiences, and cultural backgrounds present in the campus communities they serve.

• This can be achieved, in part, through the activation of community-driven policing principles, such as student group meetings and soliciting regular feedback from community members through surveys, complaint procedures, or other processes.

Recommendation #3: Mission or values statement(s)

Guiding Principle:
The department should adopt a mission statement that commits its officers and department to providing services in a manner that does not impede community members' physical, emotional, and psychological safety and establishes that services will be provided in an anti-biased and equitable manner.

Best Practices:

1. The mission or value statement should emphasize every officer's responsibility to conduct themselves in a manner that prioritizes and does not impede the well-being of the students, staff, faculty and guests.

• As the Massachusetts Supreme Judicial Court has recognized, police officers occupy positions of special public trust. *Bos. Globe Media Partners, LLC v. Dep't of Criminal Justice Info. Servs.*, 484 Mass. 279, 292 (2020). "By assuming their unique position of power and authority in our communities, police officers must

comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel." *Id.* (quoting *Police Comm'r of Boston v. Civil Serv. Comm'n*, 22 Mass. App. Ct. 364, 372 (1986)). "In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities." *Id.*

2. The mission or value statement should commit the department to providing anti-biased, high-quality service to every community member without reliance on an individual's or community's actual or perceived race, color, ethnicity, gender identity or expression, sex, sexual orientation, disability, age, socioeconomic background, national origin, immigration or citizenship status, and/or other personal characteristics non-determinative of criminal activity to justify or determine the appropriateness of the policing action.

3. At the beginning of each academic year, the department should review the mission statement.

4. Officers should be trained on or be encouraged to engage in conversations about how police encounters can affect individual community member's emotional and psychological well-being, particularly those persons from communities of color and historically underrepresented and overpoliced groups. Police services should be provided in a manner that recognizes this impact.

• Officers and department personnel should seek to understand how the historical roots and evolution of policing in America (and particularly the history of violence against communities of color) has left many individuals in fear of, or with mistrust towards, police officials.

• Officers should not try to overcome these tensions and mistrust through the use of force or oppressive tactics but through equitable policing practices, perseverance and patience. Racism is a public health issue that affects a person's sense of well-being and safety within a community and may impact their interactions with certain authorities. Officers have an obligation to account for a person's mental health in their interactions/ encounters and provide services accordingly.

5. The mission or value statement should balance officers' role to protect people and conduct investigations with their role as community partners and public servants.

   • By recognizing the need to serve as community partners, departments are not choosing equity over effectiveness; rather, departments are choosing to achieve effectiveness through equity. Policing objectives are more easily obtained through collaboration with the community that can only be achieved through transparency and the trust created by the equitable administration of police services.

Examples:

The mission of the [name of College or University] Police Department is to work collaboratively with the [name of College or University] community, to treat all whom we serve with equal courtesy, professionalism,

> The mission or value statement should balance officers' role to protect people and conduct investigations with their role as community partners and public servants.

dignity and respect while providing the highest quality of service. Our officers are guided by a commitment to (1) helping foster a safe, welcoming and supportive educational environment for all students, faculty, staff and visitors to the campus, (2) protecting public safety in a manner respectful of the physical, emotional and psychological well-being of all whom we serve and that acknowledges the historically rooted tensions between police forces and communities of color, and (3) provide quality service to all.

Recommendation #4: Fair and impartial policing

Guiding Principle:
Law enforcement agencies cannot form productive relationships with the communities they serve if community members do not believe that the agency is working fairly and equitably to protect their civil rights and civil liberties.

Best Practices:

(A) Consensual Encounters

1. Before an officer initiates an encounter with an individual, the officer should consider the following:

   a. Setting aside the individual's physical appearance, what specific behavior(s) is the individual exhibiting that rouse my suspicion?

   b. Do those behaviors make me believe that this person poses a risk of violence or physical harm?

   c. Who, specifically, would be physically harmed by this behavior? How?

   d. Are other individuals in the immediate vicinity exhibiting those same behaviors such that the behaviors are indicative not of crime but of a shared activity, *e.g.*, dancing, or of a community norm?

2. In almost all circumstances, an officer should not initiate an encounter with an individual or group when the hunch or suspicion is based upon that individual's or group's actual or perceived race, color, ethnicity, gender identity or expression, sex, sexual orientation, disability, age, socioeconomic background, national origin, immigration or citizenship status, and/or other immutable characteristic(s) or physical trait(s).

   a. When evaluating whether to engage with an individual, officers should be wary of the impression that a person seems "out of place," "sketchy," "off," or as if they "do not belong." Reflexive judgments such as these are often influenced by implicit views about race, and do not refer to an individual's behavior. As such, these judgments alone should not determine whether an officer initiates an encounter.

3. In a consensual stop where reasonable suspicion does not exist, officers should inform the engagedwith individual(s) that the encounter is strictly consensual and that they are free to leave at any time.

(B) Probable Cause or Reasonable Suspicion

4. As required by law, enforcement actions (such as detentions, traffic and other stops, arrests, searches and seizures, etc.) should be based on reasonable suspicion

or probable cause as supported by articulable facts, circumstances, and conclusions, and based upon an individual's behaviors.

5. Police officers may take into account reported race or ethnicity only when based on credible, reliable, locally relevant, temporally specific information that links a person of specific description to a particular criminal incident or incidents and is combined with other identifying information. Absent such information, race or ethnicity is never a relevant factor in determining whether there is probable cause or reasonable suspicion that a crime has been or is being committed.

6. Suspect descriptions, especially (but not exclusively) when broadcast to the campus community, should contain specific, physical descriptions of a person suspected of a crime where relevant "Black," "African American," "Hispanic," and other racial or ethnic classifications are non-descriptive, generic terms applied to a wide array of skin tones and identities; these terms do not describe a person's physical characteristics. Note: This best practice is not intended to negate the need for officers to record the perceived and actual race of seized individuals in police documents.

   a. When creating suspect descriptions, departments should consider whether the description could be used to isolate a specific individual or a small group of distinguishable individuals.

   b. For example, police departments should not broadcast or use non-descript suspect descriptions such as "Black male in a white t-shirt." Those types of descriptions do not contain enough information to be helpful in identifying an individual, and they also have the adverse effect of casting suspicion on an entire group as almost any group member may fit generalized descriptions. To the extent possible, descriptions such as "male with light/dark brown skin tones" should be favored over "Black male."

   c. Outdated and/or offensive racial terminology should never be used in a suspect description. Departments should consult their college and university's office of diversity and/or student affairs.

   d. If a caller uses (or an incident is otherwise reported using) one or more of these generic terms to describe a person, further details, such as complexion or the caller's reason for ascribing the person that particular race, should be sought. Dispatchers, or the person taking the description, should consider asking the reporter/caller questions like "I heard you describe the individual as 'Hispanic,' could you explain why you think the individual is Hispanic?" or "I understand that you believe the individual was Middle Eastern, could you tell me why? What specifically did the individual look like?"

(C) Police Encounters

7. Whenever possible, officers should prioritize de-escalating a situation and ensuring individual's emotional and physical safety. This could mean using effective communication techniques to establish a rapport with individuals, like asking questions and providing answers to questions when posed.

8. When initiating an encounter, officers should identify themselves, whenever possible, by their name and rank. When concluding the encounter, officers should, whenever feasible, provide that information in writing to individuals they have stopped, along with an incident number and the reason for the stop.

   • For example, law enforcement officers could carry business cards containing their name and rank and appropriate contact information. This would allow individuals to offer suggestions or commendations, or to file complaints with the appropriate individual, office or board. These cards would be easily distributed in all encounters.

9. If it is safe to do so, officers should, during an encounter, tell the individual in question why they are being stopped and/or searched.

10. Officers should not react negatively to questions regarding the legitimacy of a stop or interaction. If an individual expresses nonviolent discontent or dissatisfaction, officers should not attempt to quash that expression through shows of force. Officers should be polite and courteous above all, and should de-escalate situations peacefully and respectfully.

11. The use of force—including frisks, searches, and arrests—is never justified by an individual's engagement in protected speech, including speech perceived as disrespectful, discourteous or provocative. Use of force is only appropriate where necessary to (i) effect the lawful arrest of a person; (ii) prevent a person's escape

from lawful custody; or (iii) prevent imminent physical harm to a person.

12. Similarly, the show of force is not justified by an individual's engagement in protected speech and is appropriate only where necessary to (i) effect the lawful arrest of a person; (ii) prevent a person's escape from lawful custody; (iii) prevent imminent physical harm to a person; or (iv) proportionately respond to or deter a credible risk of violence assessed without regard to the

> Whenever possible, officers should prioritize de-escalating a situation and ensuring individual's emotional and physical safety. This could mean using effective communication techniques to establish a rapport with individuals, like asking questions and providing answers to questions when posed.

race of those engaging in protected speech.

(D) Post-Encounter Reports

13. Following every officer enforcement action or encounter—including consent encounters, stops and searches—the officer should appropriately document the incident, clearly identifying the basis for the action including the specific articulable facts and circumstances providing reasonable suspicion or probable cause or supporting the officer's hunch. Such documentation should notate the perceived and actual race and sex of the individual, the location of the interaction, whether any search was conducted, and whether any contraband was recovered as a result of the search.

   • Note: Most public colleges and universities have created systems by which to record traffic stop data. Any record of other police-community interactions can build on these systems and gather the same or similar information as what is or was collected during traffic stops.

14. The police department should regularly (ideally, once per semester) conduct a review of each officer's encounter documentation to ensure compliance with the prohibition on racial profiling (which has been defined to include a statistically-significant showing of disparate treatment as evidenced by relevant data) and reporting requirements. Those findings, together with the raw data, should be reported to the community

oversight commission (or advisory group) and college/university administration officials.

15. At least annually, the police department should review and analyze the entire department's encounter documentation to look for any racial disparities. Those findings, together with the raw data, should be made public and reported to the community oversight commission (or advisory group) and college/university administration officials.

Recommendation #5: "Suspicious" activity or person calls

Guiding Principle:
Police services should be limited to responding to instances or risks of physical harm to another person; police should thus respond to calls about suspicious persons or activities only if the reported activity aligns with this purpose.

Best Practices:

(A) Informing the community when to contact police

1. Departments should provide guidance (including examples) on their website and in other prominent places about when individuals should contact the police and when they should contact other first responder services, such as the community mental health and support services department.

   • Departments should strive to communicate this policy (in-person or via written material) during every first interaction between the university or college and its students, faculty or staff (e.g., new student or staff orientation).

   • Community members should have the information necessary to not only access emergency services but also understand what type of response they may expect. To the extent possible, departments should inform the community about what actions the

department will take to resolve the issue, including practices employed when an individual poses a threat to the safety of themselves or others. Any policy should also include information about what students can expect when police receive reports of an off-campus incident involving a student or other community member.

2. Departments should provide clear guidance as to what behaviors or activities are considered "suspicious" (or indicators of a risk of physical harm to another) and thus warrant police intervention. Example: "What is Suspicious Behavior?"

   The police department receives numerous complaints about suspicious activity. Sometimes, callers are unable to identify what is suspicious about a person. Without more, it is our general policy not to respond to such calls because often the person about whom a concern is filed is perhaps walking late at night alone on campus and is here for legitimate purposes like visiting a friend or attending an event.

   However, there are specific actions someone might be taking that could be an indicator that the person is about to commit a crime or harm another person. If you see something like the behaviors listed below, please call the college/university police:

   • Anyone attempting to pry windows or randomly trying doors to see if they are locked

   • Unusual noises like screaming, yelling, gunshots or glass breaking

   • Leaving packages, bags or other items behind

(B) Dispatchers (or their equivalent)

2. Dispatchers must gather sufficient information from callers to ensure that police response, if warranted, is based on reports of an individual's behavior, rather than their appearance.

• It is important that dispatchers be trained to, and know how to, question callers in order to obtain detailed information about the suspected crime witnessed as well as about descriptions of individual(s) suspected of being connected.

• For example, as part of an investigation into an incident in which police were called on a Black student, dispatchers reportedly informed investigators that they understood that they were not meant to "ask 'what's suspicious' or 'grill' a caller on 'particulars'" for fear that the caller would feel "uncomfortable" or "offended." This mentality places the burden of proof on the targeted individual, who should enjoy a presumption of innocence and the free exercise of their liberty without undue interference. The better practice is to ensure dispatchers are gathering accurate and detailed information that limits the likelihood of police encounters with people of color who are inaccurately described as suspicious. As provided below, there should be protocols dictating the level of inquiry expected of dispatchers in "suspicious person" or "suspicious activity" calls.

3. Dispatch procedures should include the following steps:

• Use a recorded line, if available, so that the information gathered can be accessed at a later time, if needed.

• Whenever possible, calls or reports about nonviolent activities (or activities for which there is no reasonable basis to believe the activity poses a threat to the physical safety of another person) should be forwarded to or responded by other applicable university departments, such as residence life, community standards, or community mental health and support services.

• Obtain the location of suspicious activity. Determine whether the location is in a building or area that is closed, locked, after hours, or otherwise not intended to be occupied. Such a determination may aid in the assessment of whether the activity reported is

Whenever possible, calls or reports about non-violent activities should be forwarded to or responded by other applicable university departments, such as residence life, community standards, or community mental health and support services.

suspicious and whether an officer response is warranted.

— For example, a report of a person sleeping at a library desk during the library's open hours is not in and of itself suspicious; nor is a report of a person innocuously eating lunch in a dormitory that requires ID access.

- Determine from the caller the specific behaviors that are considered suspicious. Dispatchers should ask questions designed to elicit information about whether the caller believes that the individual poses a risk of physical harm to another person and, if so, why. Gathering sufficient details will also help aid the officer's independent assessment of a situation when responding.

— Without more, the caller's judgment, or their labeling of a person or unspecified behavior as "suspicious," is insufficient justification for dispatching an officer to a scene.

— Use of phrases such as "out of place," "looks sketchy," "seems off," or "does not belong" may involve judgments that are influenced by the caller's explicit or implicit views about race. These kinds of phrases do not, by themselves, indicate that the person in question, or their behavior, is actually suspicious.

- Obtain a full description of the involved parties, including apparent gender; height; weight; clothing; physical characteristics, such as skin tone or complexion; and description of features.

— If a caller describes an individual as "Black," "Hispanic," "Latino," or other generic racial terms, dispatch should ask follow-up questions such as "Could you describe the individual's skin complexion?" The response to such questions should not factor into the assessment of whether police response is warranted.

- Once sufficient details are collected from the caller, the following responses are recommended:

— If the behavior is threatening or violent to others, notify officers immediately.

— If the behavior is not threatening or violent to others, ask the caller to explain why the activity appears to be

suspicious. If warranted, report the behavior to the community mental health and support services team.

— If, after further questioning, the caller offers no information that provides an objective, reasonable basis to believe that a crime has been or is being committed and the dispatcher believes—based on the objective information— that there is no risk of harm to others, and thus no immediate need for a law enforcement presence or inquiry into the situation, the caller will: (1) be advised to call later if something else occurs; (2) be provided with examples of scenarios that constitute suspicious behavior; (3) be informed that a shift supervisor will be in contact at the first opportunity. If however, the caller insists that a police presence is needed after being provided this additional information, officers should be notified. In any case, the shift supervisor should be immediately informed of this interaction and outcome and be expected to participate in the decision-making.**

- Dispatchers should also enter the call into the dispatch log, with all known and relevant information, to be subsequently updated with the officer's response and findings. In all situations, dispatch should attempt to obtain the caller's name and callback number for follow up by officers or other officials.

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**NOTE: Police departments should consider the circumstances under which a legal obligation to respond to calls or tips of suspicious activity may arise. The Massachusetts Supreme Judicial Court (SJC) recently reaffirmed that the special relationship between a university/college and its resident students may, in certain circumstances, create a legal duty to protect students from the criminal acts of third parties. Helfman v. Ne. Univ., 485 Mass. 308, 316 (2020) (quoting Mullins v. Pine Manor College, 389 Mass. 47, 52-53 (1983)) (university's duty to protect their resident students is "grounded both on the 'reasonable expectation, fostered in part by colleges themselves, that reasonable care will be exercised to protect resident students from foreseeable harm' and the observation that universities 'generally undertake voluntarily to provide their students with protection from the criminal acts of third parties'").

> Departments should make community engagement a core element of their operational philosophy. This means that the department must establish an expectation that all staff behave in a manner, and engage in activities, that support community engagement.

<u>While this document renders neither legal advice nor legal guidance</u>, ACLUM notes that in delineating the scope of this duty to protect, the SJC wrote that the "foremost" consideration "is whether a [college/ university] reasonably could foresee that [it] would be expected to take affirmative action to protect the [student] and could anticipate harm to the [student] from the failure to do so." *Helfman*, 485 Mass. at 319 (quoting *Irwin v. Ware*, 392 Mass. 745, 756 (1984)). "[T]his duty hinges on foreseeability." *Nguyen v. Massachusetts Inst. of Tech.*, 479 Mass. 436, 455 (2018); see also *Helfman*, 485 Mass. at 321 (quoting *Mullins*, 389 Mass. at 56) ("A university's duty to protect its students extends only to those harms which, based on 'an examination of all the circumstances', were reasonably foreseeable at the time."). The Court further wrote, analyzing the duty in the context of a danger created (at least in part) by students' alcohol consumption, "This duty is limited in several important respects. It applies only when a university is already aware that a student is at imminent risk of harm. … Equipped with such knowledge, a college or university merely must act reasonably under the circumstances. In some cases …, a reasonable response will include doing little or nothing at all, while in others, calling for medical or other forms of assistance might be warranted." *Helfman*, 485 Mass. at 321. This document was drafted with consideration of these legal obligations, see *Nguyen*, 479 Mass. at 456 ("[r]easonable measures by the university to satisfy a triggered duty will include initiating its . . . protocol"), but ACLUM cannot represent that following this recommendation will be sufficient to satisfy the duty.

Departments should note, however, that liability for initiating encounters based on an individual's race, ethnicity, national origin, or other protected characteristics is clearly established. See, e.g., *Commonwealth v. Long*, 485 Mass. 711, 717 (2020).

(C) Officers

4. When responding to calls about "suspicious" persons or activities, officers should:

- Ensure that all the information needed to be able to investigate the matter appropriately has been obtained (e.g., full descriptions, vehicle involved, and what behavior is creating concern). Request additional information as necessary.

- Exercise independent judgment and investigate whether the caller's understanding of the situation was accurate. Officers should consider the following when determining whether a response is appropriate:

  — Does the person match the specific and individualized description given by the caller?

  — Does the person appear to be creating a safety hazard, exhibiting violent behavior, or carrying a weapon? Would engagement be reasonable under the circumstances and based upon the officer's own observations?

  — Is the person exhibiting suspicious behavior?

  — Is the person authorized to be in that space at that time?

- If the caller does not or did not indicate that violent behavior or a weapon is involved and after careful observation and consideration of the situation, the supervisor or officer, depending on department policy, may choose not to engage. Officers should consult a shift supervisor as necessary or report the decision to the shift supervisor as required by department policy.

- If any aspect of the encounter suggests to the officer the possibility that the individual was reported due to race, ethnicity, religion or other status (even if the caller did not reference race or other status), the officer should notify their appropriate supervisor(s) to determine appropriate next steps. Next steps may include, for example, notifying the college or university's senior administration, or re-evaluating dispatch protocols.

Recommendation #6: Proactive engagement

Guiding Principle:

To emphasize its role as community partners and public servants, officers should seek to learn from community members and thereby be responsive to their policing needs and preferences. Officers should not impose upon communities, but rather work with them to help the university or college foster a safe and supportive learning environment.

Best Practices:

1. Departments should make community engagement a core element of their operational philosophy. This means that the department must establish an expectation that all staff behave in a manner, and engage in activities, that support community engagement.

   • Operational philosophy is defined as "the basic fundamental beliefs, concepts and principles that, when operationalized, guide staff behavior and organizational performance."

   • The 'goal' of community engagement is to create a sense of trust between officers and community members. However, departments should be mindful that the best way to build trust is for departments to operate in a nonbiased manner.

2. Community engagement should be carried out across every segment of the college or university community, including people of diverse faiths, races, ethnicities, cultural identities, national origins, gender identities or expressions, sexual orientations, disabilities, and socio-economic backgrounds. Departments should brainstorm and work with the college and university's office of diversity and/or student affairs to address any barriers to community engagement.

3. Departments should make available police interaction surveys on their website (or notify the community via a posting in a prominent place) and in other prominent places that allow the public to provide feedback on interactions. Such surveys should be regularly reviewed and findings addressed with identified officers.

• The surveys should allow the submitting individual to elect whether they want to receive information about the resolution or outcome of their survey and, where elected, such outcome information should be promptly provided to the individual by the department.

4. Departments should set measurable goals and performance indicators for community engagement and track the outcome.

   • All officers' performance should be evaluated in part based on their efforts to engage community members, the partnerships the officer builds, and student evaluations/complaints/commendations.

   • All officer job descriptions should establish an expectation that they carry out racially just practices and adhere to policies such as those herein. The descriptions should convey that officers would be evaluated based on their adherence to these policies and practices.

   • Departments should conduct surveys with the community at the end of each academic year that focus on the department's community engagement and outcome goals. Recording outcomes allows a department to assess what is and is not working in its engagement model. Departments should consider using student groups and other community organizations to distribute and collect the surveys.

5. Department personnel should have, as a commandlevel position, a community engagement officer or specialized community engagement team. Their responsibilities should include engaging with members of the community to explore and create new program opportunities and awareness campaigns and being a direct, dedicated liaison to the community.

   • The goal of this position or team is to learn the policing needs of the diverse range of campus community members in order to ensure that the operation of the police department is responsive to (and not averse to) those needs.

   • Those filling this/these positions should have a demonstrated commitment to and expertise (as opposed to general or broad support of values) in serving members of diverse groups.

- Officers in this role should be clear that they are not acting as a surveillance or intelligence gathering unit to aid in the prosecution or investigation of a community, group or specific persons. Any intelligence gathering done by these officers should focus on learning the needs of a community or group in order to aid the operations or performance of the department in responding to those needs. Community members should be able to trust that these officers' only motive is improving relationships between the community and the department, thereby improving quality of life at the campus.

- The goals of community engagement should be clearly communicated and prioritize transparency. This means announcing to the community the creation of any program or designation of an officer for the purposes of community engagement.

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NOTE: Officers should strive to positively engage with the community as members themselves of that community; however, the presence of a uniformed officer will not be appropriate or wanted at every event. In those situations, the officer's uniform will act as a barrier to positive engagement, and students may choose not to invite officers into those spaces as a result. Such exclusion decreases the effectiveness of policing, and departments should assess whether the community engagement officer should be a non-sworn position. This is not to imply that officers should be ashamed of wearing the badge or uniform, but it is to say that the needs of the community should be placed in front of that pride. And due to the historic role of and tensions with policing in communities of color, departments should not expect that community members can or will set aside their fears and mistrust.

6. Community engagement works best when officers maintain their professional relationship with students and do not operate as, or refer to themselves as, "friends" or "best friends." Such labeling can be seen as

minimizing or ignoring the historic problems with policing in communities of color. Examples of positive engagements include:

- Allowing students to join in opportunities offered by the police, including, problem-solving teams, community action teams and trainings.

- Inviting all student groups to meet with the department, including the chief, at the beginning of each academic year in order to foster a positive relationship with students and set the tone for future collaboration.

— Departments should try to meet with student groups, including affinity groups, as frequently as possible and as needed in order to maintain open lines of communication and to remain responsive to any known concerns.

- Hosting talkback sessions, either independently or in conjunction with a student organization, throughout the year that allow community members to voice concerns and for the department to provide answers or promise follow-up to those concerns.

— Departments should strive not to take a defensive posture during these meetings but rather be receptive to criticism and input, ensuring that community members are heard and respected.

— Departments should have the capacity to engage in conversations about hard topics, with respect for others and without judgment. This is important not only for building an inclusive community but for enabling the department to learn from its community and to fulfill its mission statement and the mission of the university or college.

- The chief of police holding regular community lectures and updates, which could include spotlights on the work of individual officers.

Departments should try to meet with student groups, including affinity groups, as frequently as possible and as needed in order to maintain open lines of communication and to remain responsive to any known concerns.

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TRAINING AND EDUCATION

Overarching Principle on Training and Education

The police department should commit to regularly and continuously training officers, and department personnel who regularly interact with students, on bias detection and inclusivity in order to ensure their practices reflect the expectations and generational and cultural norms of all students. To maximize the effectiveness of training, officers should engage in regular training in addition to the minimum state requirements.
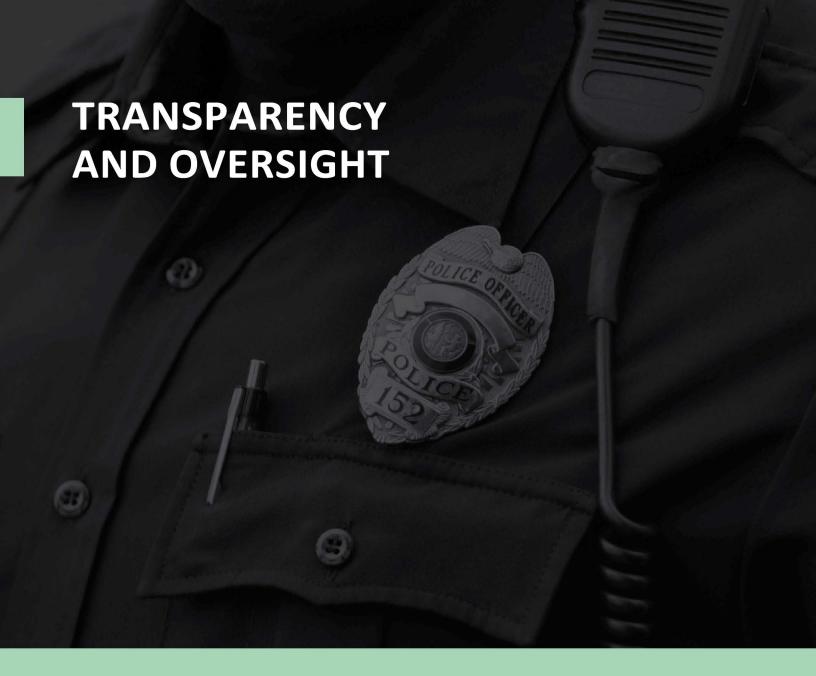
Recommendation #7: Regular, continuous and relevant training

Guiding Principle:

Officers should receive regular training on topics that prepare them to navigate and respect issues of race, gender, sexual orientation, mental health, disabilities, and other factors that may influence a person's perception of, or reception to, police. communities, but rather work with them to help the university or college foster a safe and supportive learning environment.

Best Practices:

1. All officers—and department personnel regularly interacting with students—should receive on-boarding and training consistent with state requirements for certification.

2. All officers and relevant personnel should receive in-depth training each academic year and continuous training throughout the year that, at a minimum, is designed to detect and eliminate group-based bias(es) and promote understanding of, and responsiveness towards, identities and cultures. This in-depth training should be in addition to the state required minimum training for these specific topics.

    a. Departments should ensure that officers receive training on the following: bias awareness, community problem-solving, procedural justice, de-escalation and situational decision-making, language & cultural competency, managing mental health crisis, intellectual or developmental disabilities (IDD), autism spectrum disorder (ASD), and substance use disorder (SUD).

    b. Because offensive or harsh language can escalate a minor situation, departments should underscore the importance of language used, train on what is

and how to use inclusive and respectful language, and adopt policies directing officers to use inclusive and respectful language, including language respectful of transgender and gender non-conforming individuals.

    c. Departments should work with their universities or colleges to provide officers with free access to Spanish and other language courses.

    d. Given the unique nature of the campus environment, officers should receive training on how to de-escalate situations where one or more persons are under the influence of alcohol or other intoxicating substances.

    e. Officers should regularly receive personal mental health training (at least annually), and be given tools to manage job-related stress and how to manage some community members' potential opposition.

3. Key lessons from trainings should be reinforced through performance evaluations.

4. Departments should, to the extent possible and practicable, frequently evaluate the effectiveness of training programs in order to help ensure that the training is achieving its goals. Departments should also, where possible, work with academics at their institution who have relevant experience to conduct the evaluation.

5. Where appropriate, members of the community should be allowed to attend and observe officer training sessions. Departments should consider inviting community members, including students, to speak during trainings on a voluntary basis and based on the expressed desires of the students or community.

TRANSPARENCY AND OVERSIGHT

Overarching Principles on Transparency and Oversight

The police department should commit to transparency, e.g. providing the public access to departmental policies, collecting and publishing encounter data, and responding to demands for a response regarding specific instances, which promotes accountability and trust.

Recommendation #8: Analyzing and disclosing encounter data

Guiding Principle:

Without regular assessment of its encounter and arrest data, a department cannot know (and community members cannot be confident) that it is engaged in fair and impartial policing.

NOTE: This recommendation (no. 8) suggests that departments—in a manner designed to alleviate fears about or help identify racial bias in their policing and responses—aggregate, widely publish, and regularly and consistently update data on its encounters with community members. This recommendation also notes that the data should be anonymized to the extent necessary to protect student privacy. However, universities should be aware that such disclosures could be challenged on privacy grounds based on the fact that campus communities can be small and thus persons more easily identifiable based on the level of specificity in the data. But see *Student Press Law Ctr. v. Alexander*, 778 F. Supp. 1227, 1234 (D.D.C. 1991) (enjoining government from restricting university's ability to release students' personally identifiable information in law enforcement records under Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g). Accordingly, this recommendation attempts to respect a student's right to privacy, which is an important but not absolute right that must be balanced against the university's legitimate interests. See *Bratt v. Int'l Bus. Machs. Corp.*, 467 N.E.2d 126, 133-34 (Mass. 1984) (holding that, under Massachusetts General Privacy Law, G.L. c. 214, § 1B, disclosure of private facts about an individual is proscribed under Massachusetts law only where "there exists no legitimate, countervailing interest").

Best Practices:

1. As stated under recommendation no. 4, following every enforcement action or encounter—including consent encounters, stops and searches—officers should appropriately document the incident, clearly identifying the basis for the action, including the specific articulable facts and circumstances providing reasonable suspicion or probable cause or supporting

   the officer's hunch. Such documentation should notate the perceived and actual race and sex of the individual,

the location of the interaction, whether any search was conducted, and whether any contraband was recovered as a result of the search.

2. Using this documentation, departments should analyze and publish on its website demographic data on all consent encounters, stops and uses of force. If the department does not have a website, it should notify the community—via a posting on a public-facing space normally reserved for communicating news—of the availability of the data.

3. At a minimum, such data should include the following information:

   a. General (anonymized) description of and reason for encounter

   b. Month and year of the encounter

   c. Perceived and actual race, age, and gender of the individual

   d. Badge number of officer(s) involved

   e. Outcome (including whether the person was frisked, whether a consensual or non-consensual search was conducted and the result thereof, and whether the incident resulted in an arrest, issuance of a citation or warning).

4. Departments should develop a schedule for regularly publishing and updating data. Any plan should account for the department's record keeping system and staffing.

5. All releases should be limited for privacy. Because this information would be subject to the Public Records Law (G.L. c. 66, § 10), departments should refer to G.L. c. 26, § 7, which governs exemptions to the law, for guidance.

   • This recommendation is not intended to apply to any interactions between community members and community mental health services department officials, or to responses to mental health or substance-use-related incidents.

Recommendation #9: Open communication with the community

Guiding Principle:
Police departments are accountable to their communities; accordingly, it is important that community members remain informed about and confident in the operations of the department.

Best Practices:

1. Departments should report, and make available to the community, census data regarding the composition of the department, including officers' race, ethnicity and gender.

2. Departments should publish a public communication schedule that establishes (1) guidelines about how and in what situations the department will communicate about incidents and (2) a general timeline detailing the process and timing for sharing public information following critical incidents.

   • Such a schedule should include a plan to communicate swiftly, openly and neutrally (respecting areas where the law requires confidentiality) the occurrence of serious incidents, including those involving alleged police misconduct, with community members.

   • Departments should strive to inform community members—immediately and in real time—about any incident that results in three or more officers present at a scene and about the presence of outside law enforcement agencies.

3. Departments should make their procedures and policies easily accessible and available on their website, including racially just policing policies, discipline procedures and policies, and use of force policies and reporting procedures. (If the department does not have a website, it should notify the community—via a posting in a public-facing space normally reserved for communicating news—of the right to request these policies.)

4. Departments should post on their website all policies or agreements—including memoranda of understanding (MOUs)—governing or describing any information sharing between the department and any outside law enforcement agencies, including local fusion centers or personnel. (If the department does not have a website,

it should notify the community— via a posting in a public-facing space normally reserved for communicating news—of the right to request these policies.)

5. Departments should not acquire or use remote biometric surveillance technology. However, if and when police determine that the need for such technology outweighs its myriad privacy and racial justice concerns, departments should inform the community prior to any permanent acquisition of the technology, and allow community members at least one month to provide input about this proposed acquisition which should include an opportunity for a hearing or other forms of community input. The procedure and timing for notification and community input can be relaxed in the event emergency circumstances. The decision whether to acquire any new technology should take into account this community input.

   • When informing the community, departments should provide information about how the technology works, who will use it, in what circumstances it will be used, as well as information about who will have access to the data it produces, under what circumstances, and for what purposes.

   • Community members should be informed that their submitted comments are subject to the Public Records Law and will also be anonymized and made public together with the institution's response.

   • Departments should post the information about the technology and the comment period on their website, through a social media post with a link to the relevant information, and by a notice posted at an easily-accessible location.

6. Departments should inform the community about its use of any technology that has the ability to invade personal privacy. They should do so through a posting on their website and a notice posted at an easily accessible location.

> Police departments are accountable to their communities; accordingly, it is important that community members remain informed about and confident in the operations of the department.

7. To help build community trust, departments should publish case studies (or "sentinel event reviews") on their websites when a large or controversial policing incident occurs on campus. See *Nancy Ritter, Testing a Concept and Beyond: Can the Criminal Justice System Adopt a Nonblaming Practice?*, National Institute of Justice (Dec. 1, 2015). The goal of the case studies is to provide answers to the community in instances where (1) perceived injustices occurred that were (2) either publicly acknowledged, discussed, or otherwise known, and (3) where community members are demanding or have demanded accountability.

   - Published case studies should identify (a) the incident, (b) the investigation process, (c) the response, and (d) lessons learned from the incident, including any changes to department policies and procedures that resulted from the incident or an explanation for the lack thereof. They should not contain the name(s) of any involved student(s).

   - Case studies should be redacted for privacy and be anonymized, including by eliminating any identifying characteristics. To the extent possible, or as required by the level of specificity contained in any report, the concerned individual should be made aware of the publication prior to its posting.

   - Incidents involving sexual assault, mental health incidences such as suicide, overdose incidents or other highly sensitive incidents may not be appropriate for a case study. In incidents involving highly sensitive issues where public accountability is demanded, departments should inform the community about what policy changes have been enacted to address or prevent further issues of the same kind.

   - Notwithstanding student names and other personally identifiable information that must be omitted, the type of information to be included in any such case study will depend upon the circumstances and facts of the police encounter and public response/demands. However, if an encounter has resulted in criminal charges, publishing information about the encounter may not be appropriate. In addition to consulting the involved parties and weighing the interests of transparency against the privacy rights of students, departments should consult their legal counsel prior to the publication of any case study.

NOTE: Community members usually know when instances of perceived or actual racial profiling or other biased policing incidents occur. Choosing not to address a public incident delegitimizes a department and fosters mistrust among community members. While we recognize the student privacy interests at issue here, we also recognize that, on balance, the public interests in disclosure and transparency in policing may outweigh the privacy concerns. See *Globe Newspaper Co. v. Police Com'r of Bos.*, 419 Mass. 852, 858 (1995) (quoting *Attorney General v. Collector of Lynn*, 377 Mass. 151, 158 (1979)) ("[t]he public has an interest in knowing whether public servants are carrying out their duties in an efficient and law-abiding manner").

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