

October 12, 2021

**Improving Police Department Practices: A Collaborative Set of Recommendations Involving a Portsmouth Resident Advocacy Group, the Police Commission, and the Police Department**

**Introduction**

On October 6, 2020, a resident group comprised of more than one hundred citizens represented by community members Stephanie Hausman, Marta Hurgin and Lisa Wolford proposed a set of policy changes to the Portsmouth Police Commission (PPC) designed to enhance Portsmouth Police Department (PPD) transparency, accountability, performance, goodwill, and community confidence. (These three “resident group representatives” will be referred to as the “RGR” in this document). For more than a year the PPC, represented by Joe Onosko; the PPD, represented by Chief Mark Newport; and the RGR have worked collaboratively on the recommendations summarized below.

A year later, on October 13, 2021 at a special working group meeting of the PPC, Chief Newport, and the RGR, the progress made on these recommendations will be shared with Commissioners Stefany Shaheen and Tom Hart and the public for discussion, questions, and comment. A vote to approve the recommendations will occur on October 26<sup>th</sup> at the monthly meeting of the PPC that begins at 5:30 p.m.

For ease of reference during the many meetings between the RGR, PPC, and PPD over the last 12 months, we assigned numbered bullets to each of the recommendations identified in the RGR’s original October 6, 2020 letter. The numbered bullet points below summarize the actions the PPC and PPD will take regarding each recommendation.

**Recommendations & Actions**

**(1) Collect and maintain officer encounter data.**

The PPD has always collected some encounter data. It will now significantly expand its collection and analysis of officer encounter data, and annually share these findings with the community. “Encounter data”—also referred to as “stop data”—will include all encounters between law enforcement and civilians in which the civilian’s constitutional rights are impacted; that is, situations in which the person is not at liberty to unilaterally decide to end the police encounter. Encounter data will include, for example, pedestrian, bicycle, and motor vehicle stops.

The RGR, PPC, and PPD are not aware of another police department in the northeast that gathers this level of police encounter data. Like other PDs, the Portsmouth PD currently documents only those encounters that result in a written warning or citation, and these data are not systematically analyzed.

Encounter data will enhance agency transparency and will provide the PPC, PPD and the community with much more comprehensive and reliable evidence to assess the quality of policing practices in Portsmouth, including equitable outcomes across a range of demographic sub-groups.

The PPC and PPD will continue to work with the Center for Policing Equity to develop a viable, comprehensive framework for determining the types of encounter data to be collected and analyzed each year. These data are defined in Appendix C & D of the Center for Policing Equity's publication, *Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities* (click title to access document), and will include but is not limited to the date, time, duration, and location of the stop; reason(s) for the stop; and the perceived race or ethnicity, gender (including nonconforming), age, limited or no English fluency, and disability of the person(s) stopped.

The primary vehicle for data collection will be the PPD's new Computer Aided Dispatch (CAD) software system. To ensure that vendors include these encounter data when bidding on this software contract, the PPD will include Appendix C & D in its "request for proposals" (RFP). The PPD will announce the RFP in October 2021, expects to purchase the software in early 2022, and anticipates that the CAD system will be operational by late 2022/early 2023.

The Center for Policing Equity has indicated that it may provide statistical analyses free of charge. It will be important to identify and contract with an appropriate analytics partner at the beginning of the data-collection process.

PPC & PPD will review the analyses conducted by the Center for Policing Equity (or another qualified organization) and make them available to the public within 6 months of receipt. The PPC & PPD will also inform the public of actions taken to remedy any findings that are viewed to be of concern. In addition, at monthly public PPC meetings, community members can share areas of concern they've identified in the annual evaluation data.

**(2) Adopt a policy mandating the collection and publicization of the encounter data.**

The PPD has encounter data policies; however, it will modify them, including Standard Operating Procedures (SOPs), to ensure collection and analysis of the additional data summarized in #1 above, including the sharing of findings with the public. The revised SOPs will support the effective collection and analysis of encounter data and will require the adoption of additional technologies, such as the smart phone app developed by San Diego County and used by the San Diego Police Department to collect these data, as well as data collection training for PPD officers.

The PPC and PPD will have all necessary technologies in hand and training completed for all officers within 6 months from the date the new CAD software becomes fully operational, conditional upon City Council approval of the additional funding required for implementation.

**(3) Adopt a policy prohibiting NDAs in settlement agreements.**

The use of non-disclosure agreements (NDAs) in settlement agreements against the PPD is a matter within the purview of the City Attorney. The PPD, PPC, and RGR have discussed this issue with the City Attorney. The PPD and PPC agree that the use of NDAs diminish government transparency and accountability, and that allegations against city employees can be publicly disclosed in a manner which both protects claimant privacy (if requested) and enable public understanding of a controversy.

City Attorney Sullivan agrees there is little need for NDAs in municipal settlement agreements, except perhaps to protect a victim. However, he also does not favor blanket policies given the merits and uniqueness of each case. Furthermore, because [\*Primex: NH Public Risk Management Exchange\*](#) represents the city in settlement agreements, provides defense counsel, and incurs payout costs when the city is liable, the Legal Department believes this entity has some say in the nature and extent of settlement disclosures.

At this time additional discussions are needed to clarify what NDAs, if any, will be considered going forward. It is important to note, however, that it is state law which ultimately governs the public nature of government records.

**(4) Publish PPD documents on the PPD website.**

To further enhance transparency, the PPD will continue to upload documents to its website. In response to the RGR's recommendations, the PPD has already published or relocated to the PPD website documents previously located at other City Hall links, the following:

- 135 PPD SOPs;
- Five 2020 reports from the Commission on Accreditation for Law Enforcement Agencies (CALEA), the credentialing authority with which the PPD maintains a certification; and
- Four "working agreements," between the PPC and the PPD Patrolman's Union, the PPD Ranking Officers Association, the Portsmouth Professional Management Association, and the PPD Civilian Employees Association.

Over the next month the PPD and the PPC will publish the following additional documents on the PPD website:

- The remaining 77 SOPs, excluding those SOPs the PPD has determined-would compromise officer and/or community safety if published. SOPs that are not published will each be described briefly, with an explanation for their exclusion.
- An index listing every PPD SOP, identifying the SOPs which are not published online due to the PPD's safety determinations, and providing a brief explanation for their exclusion.
- Current Memorandums of Understanding (MOUs) between the PPD and the Portsmouth schools.

In addition to the above documents, the RGR has asked the PPC and PPD to publish online all settlement agreements against the PPD within the last 10 years, and the PPD's current contract(s) with its insurer, Primex. The PPD and PPC will ensure that these past and any future PPD settlement agreements will be made available for review upon request at the clerk's office, as the Right to Know law requires. *See* RSA 91-A:4, VI. The PPC will also ensure that, consistent with the Right to Know law, Primex contracts are available for public review at the City Legal Department by appointment.

**(5) Consider reorienting PPC priorities, or creating a volunteer Resident Review Panel, to act on items (a)-(e), listed below.**

As of August 2021, discussions have not favored the establishment of an independent citizen group, given that the PPC is itself a citizen oversight group. Thus, Items (5)(a)-(e) below have been discussed as matters which the PPC would undertake.

**a) Analyze encounter data in consideration of diversity demographics.**

*See* Items (1) and (2), above.

**b) Improve complaint process; conduct surveys in marginalized communities.**

The RGR shared with the PPC & PPD feedback from seven civilians regarding the existing complaint process, including some confusion over the process as explained on PPD and PPC webpages, and concern about a lack of follow-up from the PPD and distrust that the PPD would do anything about their complaints.

The PPD and PPC will revise their complaint handling procedures to ensure that the process is accessible, understandable, responsive, and impartial. Consistent with those principles, the PPD and PPC have revised the webpage language describing the complaint processes (see revised process at the end of this document) and will remove false-report warning language from SOP P-251, its complaint affirmation form, and its complaint process descriptions.

In addition, the PPC will determine ways to better inform the community that its three members are elected to provide civilian oversight of the PPD's discharge of its mission to provide for the public's safety and security; operate ethically; operate in a manner that is responsible to the taxpayer; and ensure that its employees are accountable to the community. See full summary of PPC duties here: <http://files.cityofportsmouth.com/Files/police/Role%20and%20Authority%20of%20the%20Portsmouth%20Police%20Commission.pdf>.

Finally, although the PPD and PPC have conducted "customer satisfaction" surveys in the past (for example, see the 261-page, 2018 survey results here: <http://files.cityofportsmouth.com/files/police/PortsmouthPD2018UNHSurvey.pdf>), those surveys have not focused on historically marginalized groups -- for example, people of color, LGBTQ+ persons, and individuals living in poverty. Over the next

six months the PPD and PPC will explore additional survey methods, including consulting with statisticians and examining methods employed by other jurisdictions, to acquire feedback from these residents.

- c) Recommend further action based on (5)(a) and (5)(b).**
- d) Reassess the benefit of BWCs.**

In 2018, the PPC engaged a 7-member subcommittee of residents to examine the pros and cons of requiring PPD officers to use body-worn cameras (BWCs). The PPC published the subcommittee's findings in a July 2019 report, adopting the subcommittee's 6-to-1 decision that the PPD should not purchase BWCs. This conclusion was driven primarily by cost in relation to other department needs. Access the report here: <http://files.cityofportsmouth.com/police/Bodycamfinal.pdf>.

Since July 2019, other New Hampshire law enforcement agencies have purchased BWCs and in August 2020, the Governor's Commission on Law Enforcement Accountability, Community, and Transparency (LEACT) concluded that all New Hampshire law enforcement agencies should be encouraged to use BWCs and/or dash cameras. Further, effective July 2021, the legislature enacted RSA 105-D:3, establishing a body-worn and dashboard camera fund within the Department of Safety for the purpose of encouraging local law enforcement agencies to equip officers with body-worn cameras and agency vehicles with dashboard cameras.

In light of these developments, the PPC, PPD and RGR agree that the timing is right to revisit the feasibility of BWCs, including additional annual PPD budget costs for equipment, training & maintenance, and what would need to be cut at current funding levels or what additional monies the City Council would need to agree to appropriate.

- e) Review the PPD's EES decisions.**

Within the criminal justice system, "police misconduct" refers to violations of the criminal law and/or a police department's SOPs. Certain types of police misconduct—for example, misconduct that involves dishonesty and violations of SOPs which are egregious—must be reported to prosecutors and the Attorney General's Office, where it is documented on a statewide list called the Exculpatory Evidence Schedule (EES). As a matter of constitutional law, EES misconduct must be disclosed to criminal defendants. EES misconduct is thus a matter of significant importance to the fair administration of the criminal justice system.

Baseline EES protocols have been established by the New Hampshire Attorney General's Office. Currently, EES protocols delegate EES determinations to police chiefs. The PPD will exceed the requirements established by the EES protocols by including the PPC—our civilian oversight agency—in the EES process.

The PPD Chief will report to the PPC every case in which an officer has been disciplined with a suspension or termination, or other infraction that rises to the level of an internal investigation. Additional conversations are needed between the RGR, PPC and PPD to identify what kinds of reprimand letters should be included here, if any. The Chief's reports will be made in a timely manner at monthly non-public PPC meetings, and the PPC will participate with the Chief in all EES determinations.

The PPC will seek guidance on EES determinations from the Criminal Justice Bureau of the New Hampshire Attorney General's Office if necessary.

**(6) Include encounter-data analysis in officer performance evaluations.**

Officer evaluations (quarterly and annually) will include the expanded encounter data described in Items 1 and 2 above. The PPD will review procedures employed by agencies in other jurisdictions, such as San Diego, that use encounter data in officer evaluation and will implement this policy within 6 months of receiving statistical data analysis from Center for Policing Equity or another qualified organization.

**(7) Collect and analyze prosecution data.**

Portsmouth currently employs two prosecutors. Both prosecutors are assigned to the Legal Department but are supervised by the Chief of Police and work directly with PPD officers.

The RGR, PPC, and PPD agree that the collection of prosecution data—which includes case outcome information such as case disposition and sentence, and court rulings and prosecutor decisions about the constitutionality of police conduct—will promote the community's interest in government transparency, accountability, and the equitable administration of justice in Portsmouth.

With the assistance of the RGR, the PPD has already engaged a UNH master's degree candidate in the field of statistics to conduct a retrospective, exploratory review and analysis of prosecution data, including feedback on ways to enhance the collection and maintenance of prosecution data. This UNH student will undertake

this project in the capacity of a PPD intern and will receive guidance from PPD leadership and supervision from UNH professor of mathematics & statistics, Ernst Linder. The RGR has identified several dozen types of data which are relevant. *See* The Prosecutorial Transparency Act and Prosecution Data Memo, attached.

It is certain that data collection and analysis will be impeded by the absence of a digital collection system for prosecution data. Going forward, the PPD and PPC will review this issue to ensure more efficient digital collection of prosecution data using the new CAD system and make recommendations to the NH court system to enhance county and statewide data collection.

The PPD and PPC will share prosecution data findings with the community at the PPD website and PPC public meetings.

**(8) Analyze and publish prosecution data.**

*See* Item #7.

**(9) Require review of case outcomes in officer performance evaluations and the use of case outcomes for PPD training and improvement efforts.**

The intention of this request is to ensure that PPD supervisors (a) immediately discuss with an officer any action the officer has taken that a judge or prosecutor has determined violates the constitution, (b) include case outcome findings during officer performance reviews, and (c) use case outcome findings to help identify and guide department training and improvement efforts.

The PPC and PPD will issue formal written requests to city and county prosecutors, asking that within 7 days of such a determination, they inform PPD command staff of any case in which a judge or prosecutor has determined that the conduct of a PPD officer violated the constitution, and provide the legal reasoning behind that determination.

The PPD will create an SOP, or amend an existing SOP, describing the process by which information from prosecutors about adverse constitutional determinations shall be provided to command staff, distributed to supervisors, and maintained as contemplated by SOP P-116 (“Performance Evaluations”).

The PPD will revise SOP P-116 and Appendix A (“Performance Evaluations Measurement Definitions”) to reflect the following:



- Supervisors will discuss adverse constitutional determinations with the officer(s) involved within 7 days of receiving the information about the determination. In the alternative, supervisors will ensure that the officer(s) have discussed the matter with the prosecutor assigned to the case.
- Supervisors will discuss adverse constitutional determinations with the officer(s) involved during performance evaluations.
- Inclusion of conduct with constitutional impact as a performance measurement in Appendix A.

In addition, the PPD and PPC will ensure that all PPD officers receive ongoing training regarding PPD conduct with constitutional impact.

Given that court case outcomes are not currently part of officer evaluations, PPD leadership and the PC will begin negotiations with the ranking and patrol unions regarding the inclusion of court-related constitutional concerns in officer performance evaluations.

**(10) Identify and publish cost and percentage of PPD resources spent responding to the categories of calls and patrol activities identified in the 2021-2025 Strategic Plan.**

The PPD and PPC believe that reducing calls to an average “cost per call” would be more misleading than informative because calls within a given category differ widely in the amount of resources required for each response, and these cost-per-category averages would be inflated given they do not factor in the many other duties and services provided by the PPD.

However, for purposes of transparency the PPD will calculate percentages for each call category in its quarterly and annual reports. Note that the new CAD system will be able to create call category percentages by day, week, month, year, shift, patrol zone, individual officer, and more.

The RGR notes that the PPD’s Strategic Plans are documents created, in part, to address the PPD’s funding requests. The Strategic Plans include numerical breakdowns by some categories of calls and patrol activity, but do not make clear how those numbers impact PPD resource allocation or funding needs. The RGR anticipates that the PPC will ensure that the new CAD system will provide the needed clarity.

**(11) Identify and publish cost and stats of PPD resources spent responding to the categories of calls and patrol activities that do not require an armed response.**

For a variety of reasons, including issues of liability, the PPD and PPC do not believe that officers should respond to any calls unarmed. The RGR's position is that certain types of calls currently addressed by the PPD may not require armed officers; for example, in addition to many mental health calls, calls about "bad checks," "landlord-tenant disputes," "littering," "lost property," "minor in possession of tobacco," and "medical assistance," to name several—and, therefore, additional discussion is needed. Note, however, that the PPD and PPC are participating in #13 below regarding the possibility of replacing law enforcement officers with mental health professionals when calls involve certain kinds of mental health issues.

**(12) Identify and publish cost and stats of PPD resources spent responding to the categories of calls and patrol activities related to mental health issues.**

As explained in #10 above, the PPD believes that estimating a "cost per call" or "cost per call category" is problematic.

The current CAD system only allows for one code type per call. However, many calls involve both mental health and other relevant call codes (e.g., a specific crime, a juvenile matter) and, therefore, current coding data are inaccurate, including the number of mental health calls. In support of #13 below, the PPD in the next month will provide data on the percent of mental health calls relative to all other calls.

Also note that the new CAD system will allow each call to be given more than one code. Once the new CAD system is in place, the PPD will provide the percentage totals for each type of call related to mental health issues, and in relation to any and all other call code categories.

The RGR welcomes the PPC's assurance of clarity regarding resources utilized by the PPD in conjunction with its mental-health-related services.

**(13) Explore CAHOOTS-type call response alternatives.**

Members of the RGR and PPC Chair Stefany Shaheen spoke with a staff member at CAHOOTS in Oregon. [CAHOOTS](#) (click link here) provides consulting services to municipalities looking to institute CAHOOTS-like services. They estimate a cost of \$10,000 - \$15,000 to consult with Portsmouth.

Independently, the RGR, PPC, and PPD learned that Seacoast Mental Health Center (SMHC) is mandated (with all other area mental health agencies in the state) to start providing Mobile Crisis Response (MCR). Members of the RGR, PPD, and PPC met several times with SMHC to learn more about what the seacoast MCR will look like and how best the PPD can collaborate with SMHC to optimize the use of MCR. It makes sense to see if the seacoast MCR can augment or replace the traditional law enforcement response to mental health issues with a response involving trained mental health professionals.

At this point, SMHC anticipates its MCR to be fully operational in early 2022, though they are collaborating with the PPD to begin services before its MCR is ready county-wide. Ideally, a draft memorandum of understanding (MOU) between the PPD and area social service agencies would be created for certain kinds of calls-for-service not requiring an armed response. Once an MOU is created, implemented, and participating agencies have 'road tested' and are committed to the model, the PPC and PPD will design future PPD budgets that incorporate these alternative responses to calls for service not requiring PPD involvement.

**(14) Draft an MOU between PD and social service agencies re alternative response to calls for service that do not require an armed response.**

*See* Item 13, above.

**(15) Design a PPD budget which contemplates alternative response to calls for service that do not require an armed response.**

*See* Item 13, above.

**(16) Design a PPD budget which includes BWC.**

*See* Item 5(d), above.

## COMPLAINT PROCESS

**IT IS THE POLICY OF THE PORTSMOUTH POLICE DEPARTMENT** to receive and investigate all complaints against the Department or its members in a manner that will assure the public of prompt corrective action if Department members conduct themselves improperly.

### HOW TO MAKE A COMPLAINT:

We take complaints seriously. Every complaint made will be investigated. You may initiate a complaint against a member of the Portsmouth Police Department in one or more ways:

1. Contact Police Chief Mark Newport: [info@pd.cityofportsmouth.com](mailto:info@pd.cityofportsmouth.com).
2. Contact your civilian representatives on **the Police Commission (Click here)**.
3. Call the Police Department at **(603) 610-7406** and ask to speak to the Shift Commander;
4. Come to Police Headquarters and ask to speak to the Shift Commander;
5. Mail your written complaint to the Chief of Police at the above address or use this [complaint form \(Click here\)](#). *\*\* Complaint form to also be revised.*

### ADDITIONAL INFORMATION:

1. Complaint procedures are governed by Portsmouth Police Department SOP P-251, available on the PPD website here:  
<https://public.powerdms.com/PORTSMOUTHNH/tree>.
2. If you wish to remain anonymous by withholding your name, your complaint will still be reviewed and a preliminary investigation will be conducted.
3. A member of the PPD leadership or the PPC will provide follow-up contact within 5 to 7 days. You are also entitled to periodic status reports, weekly if necessary for extended investigations.
4. You will be notified in writing of the disposition of your complaint.