

DATE: October 26, 2023

TO: Public Safety Advisory Board

FROM: Michael Canfield, Police Chief

SUBJECT: PSAB Ad Hoc Committee Recommendations on Bias and Extremism in Policing

PURPOSE

Approve recommendations to prevent bias and extremism in the Mountain View Police Department from the PSAB Ad Hoc Committee on the California Law Enforcement Accountability Reform Act (CLEAR Act/Assembly Bill 655) and State Auditor's Report 2021-105 related to bias and extremism in policing.

BACKGROUND

On June 23, 2022, the Public Safety Advisory Board (PSAB) developed a proposed work plan for Fiscal Year 2022-23, which included a project to explore opportunities to prevent extremism in the Mountain View Police Department (MVPD), citing Assembly Bill (AB 655) and the State Auditor's Report. The City Council approved the PSAB work plan on September 13, 2022.

On November 17, 2022, the PSAB received a report on the CLEAR Act and the State Auditor's report on bias and extremism in policing. The PSAB selected an ad hoc committee consisting of Members Frink, Sandhu, and Vice Chair Tang. Upon completion of his term on PSAB, Member Sandhu's ad hoc committee position was filled by Member Souder in June 2023.

The CLEAR Act requires law enforcement agencies to screen candidates for participation in hate groups or the advocacy of expressions of hate or violence and requires law enforcement agencies to investigate complaints of officer involvement in such behavior. (See Attachment 1 for information about the CLEAR Act.)

In April 2022, the State Auditor's Office authored a report, 2021-105 (State Auditor Report), on bias and extremism in law enforcement based on the review of five law enforcement agencies across the State of California. The report identified several areas for improvement in these agencies and made operational and policy recommendations. (More information is provided below and in Attachment 2 to this memo.)

DISCUSSION

Work of the Ad Hoc Committee

The work of the ad hoc committee included reviewing and discussing the CLEAR Act and the State Auditor's Report. The ad hoc committee then reviewed MVPD policies on complaint procedures, bias, and tattoos. The ad hoc committee generated a list of questions about policies, procedures, and data for subsequent meetings with various members of the MVPD, to include the Police Chief, Professional Standards Unit Sergeant, the Administrative Lieutenant, and the Personnel and Training Sergeant.

Ad hoc committee members compared the CLEAR Act and State Auditor's Report recommendations to the existing policies and procedures regarding: diversity, investigations of bias and other misconduct, background investigations for hiring, as well as appearance and tattoos.

The ad hoc committee reviewed the training requirements mandated by the California Police Officers Standards of Training (POST) and the MVPD's training practices, assessing MVPD's training approaches on bias and extremism. The ad hoc committee reviewed MVPD's demographics and sought clarity on recruiting practices and historical methods the MVPD has used to recruit. The ad hoc committee noted the lack of a formal recruiting plan during their research and review. See the "Recommendations" portion of this report for additional findings of the ad hoc committee.

Existing Legislation and MVPD Policies

The ad hoc committee and staff noted that much of the issues related to the findings or recommendations of the CLEAR Act and State Auditor's report were addressed in other legislation or existing policies of the MVPD.

Standards and Training

Although the CLEAR Act provides additional clarification regarding bias, there is an existing law that requires peace officers to meet minimum standards, including that peace officers be free from any physical, emotional, or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation, which might adversely affect the exercise of the powers of a peace officer (Gov. Code 1031 (f)). The Police Officer Standards of Training (POST) currently requires all police officers to satisfactorily complete academy training on bias and discrimination and that they complete additional related training every five (5) years thereafter, or on a more frequent basis if deemed necessary, in order to keep current with changing racial, identity, and cultural trends (Pen. Code 13519.4 (i)).

Current law requires that POST study, review, and update their regulations and associated screening materials related to the evaluation of emotional and mental condition to include the identification of explicit and implicit bias toward race or ethnicity, gender, nationality, religion, disability, or sexual orientation (Gov. Code 1031.3.). This POST mandate guarantees that the content and regularity of bias training are guided externally and are subject to updates and evolution.

Investigation and Consequences of Misconduct

Additional existing law provides that a peace officer may have their certification suspended or revoked if the person has engaged in any serious misconduct while employed as a peace officer, where “serious misconduct” includes: demonstrating bias on the basis of race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer’s obligation to carry out their duties in a fair and unbiased manner. (Pen. Code 13510.8(b)).

The MVPD defines allegations of bias as major misconduct. MVPD practice for internal affairs investigations of major misconduct includes the creation of a review board, which involves the Human Resources Department and the review of sustained findings by the City Attorney’s Office.

Additionally, effective January 1, 2023, Senate Bill (SB) 2 will empower POST to review and potentially decertify any peace officer with a sustained allegation of serious misconduct, which includes demonstrated bias on the basis of any legally protected status, in violation of law or department policy, or in a manner inconsistent with a peace officer’s obligation to carry out their duties in a fair and unbiased manner.

Effective January 1, 2023, SB 16 requires all sustained allegations of major misconduct, which includes bias, to be subject to public release under the California Public Records Act.

Hiring Process and Background Investigations

Regarding peace officer background investigations, the MVPD currently contracts with an outside vendor who operates in adherence with POST guidelines and recommendations. The background investigators review public social media accounts, tattoos, and references for indications of bias or other concerning behavior. California Labor Code 980 prohibits employers from requesting or requiring that applicants disclose the usernames or passwords for their personal social media accounts. The State Auditor’s Report acknowledges this apparent conflict; however, the Report indicated it was unclear if this applied to peace officers. Currently, POST is instructing

background investigators that this information is protected and may not be requested during a background investigation.

The State Auditor's Report recommended the foundation of community advisory bodies, which the MVPD has utilized through the Latino Community Advisory Committee (LCAC) and the Faith Leaders Advisory Council (FLAC). The Report recommends utilizing these bodies to further the areas of recruitment, hiring, training, and community engagement.

RECOMMENDATIONS

The ad hoc committee recommends that the PSAB approve the following recommendations to the MVPD:

1. MVPD should continue to comply with existing City, POST, legal, and legislative requirements regarding training, hiring, and investigations of misconduct.
2. MVPD should ensure a focus on recruiting and training qualified applicants who represent the diversity of Mountain View.
 - a. Develop a formal MVPD recruiting plan that addresses recruiting efforts that represents the diversity of our community.
 - b. Develop a process for monitoring data on the diversity of applicants, new hires, and existing personnel.
 - c. Incorporate the feedback from the LCAC and FLAC to inform the recruiting plan, hiring process, and department training.
 - d. Formalize in-house training with new and lateral officers to include cultural appreciation of our diverse community, the values of the City and the MVPD and the culture of the MVPD as a community partner.
3. MVPD should prioritize the assessment of applicant's ability to work with Mountain View's diverse community by incorporating questions designed to gauge cultural competency into the hiring process interviews.
 - a. The MVPD should consider inviting the Chief's advisory committee members or other community stakeholders to meet with hiring panels and the Police Chief to provide input on the characteristics and qualities they desire in their MVPD officers.

4. MVPD should continue to seek and grow opportunities for community engagement and to use those opportunities to promote awareness of the diversity of Mountain View for all officers in the department, providing valuable connections and insights into our unique Mountain View community.
5. MVPD should continue to survey our community to assess effectiveness of communication and solicit feedback on the Department's performance and look for areas of disparity amongst our diverse community; seek to provide those survey tools in the languages predominantly spoken in the Mountain View community.
6. MVPD should continue to work with their vendors whose products cover use of force, pursuit driving, complaints, and customer satisfaction to identify opportunities to adopt systems designed to identify potential issues or patterns of conduct and provide early opportunities for intervention and training.
7. MVPD should continue to report data allegations of bias misconduct to the PSAB and include a specific notification in the Twice-Yearly Report on Mountain View Police Department Performance and Feedback Data to PSAB if such allegations are sustained.

MC/CB/4/POL
308-10-18-23M

Attachments: 1. [The CLEAR Act/AB 655](#)
2. [State Auditor's Report 2021-105](#)