

# NEW ERA OF PUBLIC SAFETY

A GUIDE TO FAIR, SAFE, AND EFFECTIVE  
COMMUNITY POLICING

# 2

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## BIAS-FREE POLICING

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Equal treatment of all people, regardless of background, class, or characteristic, protects and preserves public safety and builds trust and confidence in policing. Yet much work remains to be done to achieve this ideal in the field of law enforcement. Uprisings in cities like Detroit and Newark in the 1960s, Los Angeles in the 1990s, and Baltimore in the 2010s were reactions to discrimination against Black people by police officers. And yet, even after decades of protest, discrimination against people of color continues, sometimes with lethal effects. Indeed, police shootings of Michael Brown in Ferguson, Missouri; Tamir Rice in Cleveland, Ohio; and Stephon Clark in Sacramento, California — all unarmed Black men — have led many to question whether these deadly incidents would have occurred had these men been White.

Discriminatory policing, which targets people of color more often than others,<sup>1</sup> has serious consequences not only for individuals and communities but also for law enforcement and for society. Indeed, it fosters distrust of and a lack of confidence in law enforcement, which, as the National Institute of Justice notes, “undermines the legitimacy of law enforcement and, without legitimacy[,] police lose their ability and authority to function effectively.”<sup>2</sup> As police officers well know, police need the community on their side to function well.







Distrust of and lack of confidence in police stem from a long history of police violence against people of color, from early enforcement of fugitive slave laws to beatings of civil rights protesters to the modern-day impact of bias-based police practices on communities of color<sup>3</sup> and other marginalized groups.<sup>4</sup> This history is perpetuated by police cultures of “warriors at war with the people [they] are sworn to protect and serve.”<sup>5</sup>

Discriminatory policing is, as the Police Executive Research Forum states, “antithetical to democratic policing.”<sup>6</sup> Yet inadequate policies and accountability systems allow it to continue. The good news is that better policing is possible. Through training, policy, and practice, departments can prevent discriminatory policing and reduce and mitigate its disparate impact on marginalized communities. To achieve this goal, departments should work with communities to create cultures of inclusivity and accountability and promote bias-free policing; condemn bias and discrimination in all police practices; ensure that all officers are trained to counteract biases; implement robust accountability systems; and track data on disparate outcomes.





# RECOMMENDED BEST PRACTICES

To practice bias-free policing, departments should work with communities to:

## 2.1

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Adopt comprehensive bias-free policies.

## 2.2

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Ensure officers are trained in bias-free policing.

## 2.3

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Supervise, monitor, and hold officers accountable for policy violations.

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Take corrective action when data indicate bias-based policing.

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Address complaints and calls for service based on racial and ethnic profiling.

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Identify and investigate hate crimes.

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Collect, analyze, and publicly report data relating to bias-based policing.

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Create cultures of inclusivity and accountability and diverse workplaces.

## 2.9

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Work for broad social change.



# PROFILING

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Racial and ethnic profiling and other discriminatory police practices arise from biases — beliefs and attitudes about people and groups.<sup>7</sup> Explicit biases are deliberate attitudes or beliefs that can predict discriminatory behavior and, indeed, lead to it.<sup>8</sup> Discriminatory behavior harms individuals and communities, such as when police officers stop young Black men because they believe that they're more likely to carry contraband than other people. This kind of bias is clear-cut, unambiguous, and contrary to the Fourteenth Amendment, which prohibits government action where a “discriminatory purpose has been a motivating factor in the decision.”<sup>9</sup>

Implicit biases are subconscious assumptions formed by automatic associations people make about groups of people based on their personal characteristics.<sup>10</sup> These associations shape how people understand the world and

influence their decisions and actions.<sup>11</sup> This neurological process is innate and, in general, helps people navigate life.<sup>12</sup> Children, for example, learn early on to associate fire with heat, which protects them from burns.

But this process also causes people to associate specific personal characteristics with larger social groups and to overgeneralize about, or stereotype, them.<sup>13</sup> In fact, people can make negative associations about social groups even if they consciously disagree with them.<sup>14</sup> Implicit biases about social groups are reflected in scientific research. One study found that White people perceive Black faces with certain expressions as angry — but they don't come to the same conclusion about White faces with the same expression.<sup>15</sup> Another study found that people reacted similarly to computer-based “shoot/don't shoot” scenarios: They were more likely to



misperceive an object as a gun when displayed by a Black person and to automatically associate Black male faces with guns.<sup>16</sup>

In policing, racial biases can lead officers to assume that some people are inherently more dangerous than others, more prone to criminal activity, and more prone to certain types of crime based on their personal characteristics — and then to act on those assumptions in a way that has a discriminatory effect.<sup>17</sup> Such biases may cause an officer to assume that a young Black man in a nice car has stolen it and to stop him without cause. Or, they may cause an officer to make positive — but also problematic — assumptions that certain groups of people do not commit crime.

Negative implicit biases also lead to racial and ethnic profiling in stops, searches, arrests, and other police activity and, as noted earlier, to inappropriate, and sometimes lethal, uses of force.

Despite their danger, implicit social biases are pervasive and persistent across human society. All people, including those with firm commitments to justice and equality, make

assumptions about people based on their personal characteristics, whether they are aware of it or not.<sup>18</sup> Even people from marginalized groups can hold negative implicit biases against people from their own groups. These biases result in inequity and discrimination, which harms individuals and communities and erodes trust and confidence in law enforcement and the government, especially when officers and departments are not held accountable.

Police leaders should be clear that explicit bias is against the law, morally and ethically wrong, and antithetical to the field's fundamental mission to provide services equitably to all people. Implicit biases are more difficult to detect than explicit biases and, consequently, more complicated to address. But the result is the same for those on the receiving end: discrimination. Fortunately, departments can address and mitigate the harm caused by implicit biases through education, training, inclusive cultures, and diverse workplaces. Discrimination, in short, is not merely a problem of the past. It exists today but, with the right interventions, does not have to in the future.



Never  
Stop  
being  
Black  
Gay  
Muslim  
Female  
Trans  
Differently  
Abled  
Latino



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# EQUAL PROTECTION UNDER THE LAW

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The equal protection clause of the Fourteenth Amendment to the U.S. Constitution guarantees equal protection under the law and safeguards the public from unlawful police conduct. This means that police officers can't treat some people differently than others based on race, national origin, religion, or gender.<sup>19</sup> Discriminatory policing occurs when police officers selectively enforce, or fail to enforce, the law based on these — or other — personal characteristics.<sup>20</sup>

Police leaders should address discrimination and bias in policing; otherwise, they undermine their ability to protect and serve the public and expose themselves and their departments to civil liability. To ensure police practices meet legal and constitutional antidiscrimination requirements, departments should develop policies, training, and accountability systems to address officer behavior and department practices.<sup>21</sup> Equal protection violations arise when departments implement practices with express classifications (e.g., a policy to

stop all Latinx drivers) or enforce facially neutral policies (i.e., nondiscriminatory as written) in a discriminatory manner.<sup>22</sup> If the policy is facially neutral, then someone who challenges it must show that the department's enforcement was motivated by a discriminatory purpose and had a disproportionate impact on a certain group; moreover, they must show that the enforcement action could not be justified on a legitimate basis.<sup>23</sup>

Direct evidence of discriminatory intent is hard, if not impossible, to obtain.<sup>24</sup> For this reason, courts allow circumstantial evidence to show discriminatory intent.<sup>25</sup> This can include contemporaneous statements by decision-makers that reveal discriminatory intent; the disproportionate impact of an action on a particular group (i.e., its "disparate impact" or "disproportionately adverse effect"); actions, decisions, or events leading to the adoption of a policy or enforcement practice; and evidence of departure from normal practices or procedures.<sup>26</sup>



Under this analysis, police departments have been held accountable for discriminatory policies and practices that violate the Fourteenth Amendment. In Floyd v. New York, a federal court found the New York Police Department's (NYPD) stop-and-frisk program unconstitutional because, while not discriminatory on paper, it targeted Blacks and Latinxs in a discriminatory manner and had a disproportionate impact on them.<sup>27</sup> The plaintiffs presented statistical evidence showing that young Black and Latinx men were more likely than their White counterparts to (1) be stopped, (2) be arrested rather than given a citation, and (3) have force used against them.<sup>28</sup> (For more detail, see Chapter 3.)

This statistical evidence of a disproportionate effect — coupled with the department's policy of targeting "the right people" (which meant, in practice, people of color) and the NYPD commissioner's acknowledgment that stops focused on Black and Latinx people — showed that the program "violated the bedrock principles of equality."<sup>29</sup> As a remedy, the court appointed an independent monitor to oversee the NYPD's reform of stop-and-frisk policing and required the department to work with community stakeholders to develop policies and provide input on the reform process.<sup>30</sup>

Profiling constitutes intentional discrimination in violation of the equal protection clause if it involves an express classification based on race or ethnicity, as was the case at the Maricopa County Sheriff's Office (MCSO) in Arizona. In 2013, a federal judge found that, despite its written ban on racial profiling, the MCSO allowed deputies to use race as a factor in immigration sweeps and traffic stops.<sup>31</sup> The plaintiffs in the case (Melendres v. Arpaio) produced evidence revealing that then-Sheriff Joe Arpaio forwarded racially charged constituent letters to his deputies, who exchanged racially charged emails with each other.<sup>32</sup>

This evidence, combined with the department's express permission for officers to make racial classifications in law enforcement decisions, led the court to conclude that the department's policies and practices violated the equal protection clause.<sup>33</sup> As a result, the court ordered the MCSO to stop ethnically profiling Latinx people. Arpaio was later found guilty of criminal contempt of court for defying the judge's order<sup>34</sup> and lost his bid for reelection. (See Chapter 3 for a discussion of racial profiling on the New Jersey Turnpike.)



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# SOCIETAL COSTS AND CAUSES

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Over time, the U.S. Supreme Court has recognized the disparate impact of seemingly neutral policies by tracing them back to invidious racial discrimination practices in areas such as employment, housing, and education.<sup>35</sup>

Indeed, Black people have been subject to a long history of discrimination. After slavery was outlawed, the Black Codes continued a legalized system of oppression, followed by Jim Crow laws that enforced racial segregation in virtually all walks of life. In 1954, the Supreme Court declared segregation in public schools (i.e., “separate but equal” education) unconstitutional.<sup>36</sup> And, in the 1960s, Congress banned segregation in public places and discrimination in employment, voting practices, and in the sale, rental, and financing of housing.<sup>37</sup>

Nevertheless, discrimination continues. Though outlawed more than 50 years ago, “redlining” — the systematic practice of denying loans and housing insurance to people based on race or ethnicity — continues to concentrate people of color in low-income communities.<sup>38</sup> Other forms of discrimination have also arisen. In the 1990s, for example, lenders targeted subprime loans to people of color,<sup>39</sup> which influenced residential patterns and rates of home ownership.

These patterns led to police practices that have had a disparate impact on communities of color. To cite one example, Baltimore’s history of city-sponsored racial segregation denied Black residents economic and educational opportunities by systematically preventing them from moving to neighborhoods with better jobs and schools.<sup>40</sup> In 2016, the Baltimore Police Department’s “zero tolerance” approach



to crime, which involves stopping and searching people and arresting them for minor offenses, such as drug possession, was found to have a disparate impact on the city's Black community because it focused on predominantly Black neighborhoods.<sup>41</sup>

While the full impact of bias-based policing on individuals and communities remains unclear, criminal justice experts suspect it has long-term negative psychological and social effects.<sup>42</sup> A recent study identified symptoms of post-traumatic stress disorder (PTSD) and anxiety among young men in New York City who had been subjected to intrusive or "more invasive [police] tactics[,] such as frisks, threats and use of force, or handcuffing."<sup>43</sup> Research also shows that contact with police officers and the criminal justice system suppresses engagement with the political system. People who have had negative experiences with police officers are more likely to distrust authority figures and less likely to advocate for themselves through the political and democratic processes.<sup>44</sup> But much more research is needed to quantify the full impact that discriminatory police practices have on individuals, communities, and society.<sup>45</sup>





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# DATA-DRIVEN AND PLACE-BASED ENFORCEMENT

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Data used to “predict” or “forecast” crime compound problems. Predictive policing technologies often use data that originate from biased decision-making by officers and thus produce biased results.<sup>46</sup> If discriminatory practices yield the crime data that are analyzed, then the results and conclusions will be inherently biased. More heavily patrolled neighborhoods naturally have more enforcement activity, which is then reflected in crime data. In other words, an initial enforcement decision to patrol a certain community produces data that then determine future decisions about which neighborhoods to patrol and how to do so.<sup>47</sup> This creates a “feedback loop” in which officers consistently return to the same neighborhoods.<sup>48</sup>

This phenomenon also occurs in “proactive policing,” whereby departments use crime data to determine which communities to

saturate with officers to enforce minor offenses. This practice exacerbates racial and ethnic disparities and creates the appearance of higher crime rates in communities of color. The Tampa (Florida) Police Department’s bike-stop practice, for example, was found to have racial disparities “related to place-based differences in bicycle law enforcement” because stops occurred at substantially higher rates in higher-crime areas than in lower-crime areas and because Black cyclists faced a disproportionate risk of being stopped.<sup>49</sup> The U.S. Department of Justice (DOJ) concluded that the racial disparity arose from the department’s focus on high-crime areas and on Black cyclists.<sup>50</sup> Moreover, enforcement based on “going where the crime is” has been found to be largely ineffective in reducing crime.<sup>51</sup>

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# BEST PRACTICES IN BIAS-FREE POLICING

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The effects of discriminatory policing can't be reversed — but they can be changed. To reduce and mitigate the effects of bias in policing, departments and communities should confront the current reality, and long history, of racism and discrimination in America and its impact on individuals, families, communities, and society. They should reevaluate existing strategies and practices to account for this reality and history. Otherwise, solutions will be nothing more than stopgaps.

To build trust, engage communities, and improve public safety, police leaders should make clear that discriminatory policing has no place in police departments or law enforcement. To ensure policing is fair and impartial, they should develop policies that explain how officers can carry out law enforcement duties without bias and explain prohibited conduct and behavior in detail. Training should reinforce the principles of bias-free policing, explore how biases influence decisions and actions, and instruct officers in cultural competency so they can better appreciate and understand the norms and traditions of various communities.



Supervisors should closely monitor officers to detect and address biased enforcement activities. This involves not only reviewing and analyzing officer-generated reports but also departmentwide data that may indicate officers who are statistical outliers (when compared with fellow officers) and if any policies or practices have disproportionate effects on marginalized communities. (For more detail, see Chapter 8.) If and when bias-based policing is discovered, supervisors should swiftly address it through interventions and discipline. To practice bias-free policing, departments should work with communities to:

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## **RECOMMENDATION 2.1 ADOPT COMPREHENSIVE BIAS-FREE POLICIES.**

To affirm their commitment to treat everyone equitably and with respect, police departments should develop written policies that lay out expectations of bias-free police services. These policies should provide guidance on bias-free policing, implicit bias, cultural competency, and procedural justice, and they should be reinforced through academy and in-service training.

Many departments have formal policies (some of which are also reflected in their mission or values statements) that endorse fair and equal treatment of all people and that prohibit discrimination. Policies that address explicit bias should be updated and expanded to cover implicit bias as well.

Departments should invite community members and stakeholders to participate in this effort to ensure that bias-free policies adequately address community concerns and comport with community views on fairness and equity. Specifically, departments should:

### **Identify equity and fairness as core values in their mission statements.**

Departmental mission and values statements set out the principles that animate external and internal activities, such as police practices, community relationships, and accountability systems. Equity and fairness should be identified in these documents as core values and perpetual goals. The Baltimore Police Department, for example, revised its mission statement after entering into a federal consent decree, or settlement agreement, to “fostering trust with community members, safeguarding life and property, and promoting public safety through enforcing the law in a fair and impartial manner.”<sup>52</sup>

Departments should weave these principles into all other policies and training to reinforce their commitment to bias-free policing.

### **Provide protections for broad categories of people.**

Bias-free policies should describe all categories of people that officers are prohibited from discriminating against. They should also explain that discrimination and bias can be based on how a person perceives another’s race, ethnicity, or other specific characteristic. An officer who is biased against Muslims and unlawfully stops a Sikh man because she thinks he’s Muslim has discriminated against him. In other words, it doesn’t matter whether the person who was

discriminated against identifies with a protected class or belongs to the intended target group; the discriminatory act, whomever perpetrated against, constitutes discrimination.

While most departments recognize race, ethnicity, national origin, and gender as protected classes, bias-free policies should go beyond federal and state law protections to proscribe discriminatory treatment of people from other marginalized groups.<sup>53</sup> The Seattle Police Department, for example, defines bias-based policing as differential treatment of anyone of a protected class but goes on to include “other discernible characteristics,” such as age, disability, economic status, familial status, gender, gender identity, mental illness, housing status, sexual orientation, and veteran status.<sup>54</sup>

### **Prohibit bias in all law enforcement**

**decisions.** Departments should strictly prohibit bias-based policing and should clearly state how to carry out law enforcement duties without bias or engaging in prohibited conduct. They should also address the perception of bias, which is also detrimental to police-community relationships.







**Procedural justice in police interactions with communities includes:**

**1**

**Being professional and polite.**

**2**

**Explaining the reason for the contact.**

**3**

**Detaining a person no longer than necessary.**

**4**

**Explaining the reason for any delay.**

**5**

**Answering the person's questions.**

**6**

**Providing name and badge number when requested.**

**7**

**Apologizing for any inconvenience if the officer determines the person was not engaged in criminal activity.**

Sources: New Orleans Police Dep't, Operations Manual Chapter 41.13: Bias-Free Policing 3-4 (eff. July 10, 2016), <https://www.nola.gov/getattachment/NOPD/Policies/Bias-Free.pdf/>; Baltimore Police Dep't, Draft Policy 317: Fair and Impartial Policing 4 (Aug 24, 2018), <https://www.baltimorepolice.org/317-draft-fair-and-impartial-policing>.

### To prevent bias-based policing, departments should ensure that officers:

- + Conduct all law enforcement activities without discrimination and based on observable conduct or specific information that provides a legal basis for the activity.
- + Record and report demographic information for law enforcement activities, including pedestrian and vehicle stops, detentions, frisks, searches, seizures, arrests, uses of force, and complaint data, according to departments' formal data collection processes.
- + Intervene to prevent or stop discriminatory enforcement activities.<sup>55</sup>
- + Report bias-based incidents that they witness or are aware of.<sup>56</sup>
- + Use procedural justice principles in all interactions with community members to prevent the perception of bias.
- + Provide complaint forms and information about how to file a complaint upon request in all circumstances and make them publicly available in alternative and accessible formats.<sup>57</sup>

### Departments should ensure that officers do not:

- x Make any decision about any law enforcement activity based on someone's actual or perceived race, ethnicity, national origin, religion, gender, gender identity, sexual orientation, age, disability, familial status, immigration status, veteran status, health status, housing status, economic status, occupation, proficiency with the English language, or other personal characteristic.<sup>58</sup>
- x Determine reasonable suspicion or probable cause based on a perceived or actual characteristic (i.e., profile), unless it is part of a reliable description of a specific person suspected of a crime that includes other nondemographic identifying factors.<sup>59</sup>
- x Engage in, encourage, or ignore discriminatory enforcement decisions by other officers.<sup>60</sup>
- x Profile (i.e., take a law enforcement action against a person or group of people based on a personal characteristic), even when the officer has reasonable suspicion or probable cause to believe a violation has occurred.<sup>61</sup>
- x Deny police services based on someone's actual or perceived characteristics.<sup>62</sup>
- x Use discriminatory or biased language (verbal or written), or make derogatory or disparaging remarks or gestures about any discernable characteristics, including on personal social media accounts.<sup>63</sup>
- x Ask about or record a person's actual or perceived sexual orientation, gender identity, or immigration status in reports.<sup>64</sup>
- x Retaliate against anyone who reports incidents involving discrimination or bias.<sup>65</sup>

**Prohibit gender bias.** Because of the unique nature and complexity of gender bias, which acutely affects women and LGBTQ people, departments should have stand-alone policies and training to circumscribe behaviors and practices that lead to it.

Gender bias manifests in a variety of ways in policing. Female officers may not be considered for promotions because of their gender or be subject to harassment or “locker room” talk. (For more detail, see Chapter 9.) Survivors of sexual assault and intimate partner violence may have claims dismissed or not investigated.<sup>66</sup> And women, especially those who work in the sex trade, may be profiled or victims of officer-involved sexual violence.<sup>67</sup>

Sexual misconduct encompasses a variety of behaviors. The International Association of Chiefs of Police (IACP) lists behaviors including, but not limited to, sexual assault and rape; shakedowns for sexual favors in exchange for not being ticketed or arrested; inappropriate or unnecessary touching during searches or pat-downs; sexual contact while on duty; and sexual harassment of coworkers.<sup>68</sup>

Departments’ failure to properly respond to allegations of sexual assault or intimate partner violence<sup>69</sup> or to adequately investigate them denies victims equal protection under the law.<sup>70</sup> The under-enforcement of these cases constitutes discrimination because it disproportionately affects women and LGBTQ people.<sup>71</sup> The impact is compounded by the fact that many people are reluctant to report sexual assault because they think they won’t be believed or that they’ll be shamed and blamed. When the Department of Justice found that the Missoula (Montana) Police Department had a pattern of inadequately responding to women’s reports of sexual misconduct, it noted that this type of discrimination erodes “confidence in the criminal justice system, places women ... at increased risk of harm, and reinforces ingrained stereotypes about women.”<sup>72</sup>

To avoid the breakdown in confidence and legitimacy of police, departments should have policies for handling cases of sexual assault and intimate partner violence.<sup>73</sup> The IACP calls for trauma-informed, victim-centered responses to and investigations of sexual assault cases. This includes clarifying all department members’ roles in these processes; adopting strategies to prevent prejudging the validity of cases; responding in a respectful, objective manner; offering survivors forensic exams and medical care; referring survivors to community-based services and sexual assault survivor advocates; and holding perpetrators accountable.<sup>74</sup>

The DOJ, for its part, warns against determining a victim’s “credibility” based on gender stereotypes when responding to cases of sexual assault and intimate partner violence.<sup>75</sup> To counter the effects of stereotypes on officer conduct, departments should revise policies and training to ensure that officers treat survivors with dignity and respect, use trauma-informed investigation techniques, and gather evidence in an unbiased manner.<sup>76</sup>





Sexual misconduct is a crime that should be taken seriously by department leaders.<sup>77</sup> Yet more than half of the nation's largest police departments have no policy addressing sexual misconduct or harassment by police officers.<sup>78</sup> Department leaders can't simply rely on sexual harassment policies to hold officers accountable for sexual misconduct; without proper policies, departments effectively condone misconduct.<sup>79</sup>

The Final Report of the President's Task Force on 21st Century Policing (the President's Task Force Report) and the IACP's guide on addressing officer-involved sexual misconduct recommend that departments adopt policies to effectively prevent, detect, and ensure accountability.<sup>80</sup> Department leaders should create a culture of accountability and set priorities and expectations for officer conduct. Otherwise, negative attitudes and misconduct internally can spill over to officers' interactions with the public and proliferate sexual misconduct.<sup>81</sup> Departmental policies should also reflect the fact that LGBTQ people are often victims of officer-involved sexual misconduct and should articulate appropriate practices, including search-and-seizure procedures, for interactions with LGBTQ people.<sup>82</sup>

**Develop stand-alone policies for fair and objective interactions with specific groups.** While the principles of bias-free policing apply to interactions with all people, specific groups have unique needs. The President's Task Force Report recommends that departments adopt policies and train officers for interactions with LGBTQ people (including whether to determine gender identity for arrest placement); the Muslim, Arab, and South Asian American communities; and immigrants and communities with limited English proficiency (LEP).<sup>83</sup>



The New Orleans Police Department adopted a bias-free policy directed at interactions with immigrants in 2016. The policy forbids enforcement action based on actual or perceived immigration status; asking people about their immigration status; or helping with immigration enforcement unless life or public safety is at risk.<sup>84</sup> In 2007, the Metropolitan Police Department in Washington, D.C., implemented a policy for interactions with transgender people that defines key terms and addresses use of proper pronouns, prohibitions against using demeaning language, and proper search-and-frisk techniques (including having an officer of the gender requested conduct the search, absent exigent circumstances).<sup>85</sup> To build

trust and legitimacy, group-specific policies and training should be developed with input and support from members of protected classes and advocacy groups that are the target of bias, as recommended by the President's Task Force Report.<sup>86</sup>

**Mandate reporting of biased policing.**

To properly hold officers accountable, departments should establish clear protocols for officers to report biased incidents, whether witnessed or learned about through other means. The Seattle Police Department's Bias-Free Policing policy is a good example. It states: "Employees who have observed or are aware of others who have engaged in bias-based policing [must] specifically report such incidents





to a supervisor, providing all information known to them before the end of the shift during which they make the observation or become aware of the incident.”<sup>87</sup>

The New Orleans Police Department establishes the same duty to report bias-based policing and also requires officers to do so by the end of the shift during which it happened or they learned of it.<sup>88</sup> Policies should clarify that the failure to report misconduct is itself misconduct and will be disciplined accordingly.<sup>89</sup> To assuage fear, departments should also create safeguards to protect officers who report bias-based policing from retaliation or discipline and articulate them in policy.<sup>90</sup>

**Bias-free policies should clearly address disciplinary consequences for violations.** Discriminatory police practices are detrimental to communities and to police legitimacy. Addressing these types of violations should be departments’ highest priority, and officers should be on notice that biased behavior and enforcement activities are not tolerated and will be disciplined.

In New Jersey, the Newark Police Department, for example, notes that discipline for policy violations applies to all officers, including supervisors, and includes counseling, mediation, training, and, when warranted, termination.<sup>91</sup>



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## **RECOMMENDATION 2.2**

### **ENSURE OFFICERS ARE TRAINED IN BIAS-FREE POLICING.**

Officers should be trained in bias-free policing in order to put bias-free policies to work, and officers should know how to recognize implicit biases before taking action. Bias-free principles and tools should be taught during training in bias-free policing and in other subjects as well. For example, use-of-force training should instruct officers to identify and combat biases when deciding to use force.

#### **Departments should ensure that officers are trained in:**

- The impact of arbitrary classifications, stereotypes, and biases, including subconscious, or implicit, biases.
- How to minimize the effects of bias when officers recognize it.
- Cultural competency, including cross-cultural communication skills (so officers can understand and appreciate cultural and ethnic norms and traditions).
- The negative effects of discriminatory policing on police legitimacy.
- Constitutional and other legal protections that safeguard against unlawful discrimination.
- Identification of key decision points when bias can influence actions.
- Data collection protocols to evaluate patterns of discriminatory policing.
- Strategies for defusing conflicts.
- The history of racism and discrimination in the United States and around the world.
- Procedural justice principles, including: respect, bias-free decision-making, explaining processes during interactions, and allowing people to express themselves during interactions with community members (i.e., allowing community voices to be heard).<sup>92</sup>
- How to intervene to prevent and stop misconduct.<sup>93</sup>

Bias and discrimination are difficult topics to discuss and sometimes trigger defensive responses. For this reason, trainers should create learning spaces that are open and engaging. Department leaders should carefully select officers to teach this sensitive subject matter and train them to do so in a non-threatening, non-accusatory way so that it does not lead to disengagement. What's more, trainers should not be forced into the job; they should be willing participants who volunteer for the assignment and who do not have records of misconduct complaints.

Department leaders should regularly review and evaluate training programs and curricula to ensure they reflect new developments in the field, and they should analyze data (e.g., the number of complaints alleging discriminatory treatment) to measure the effect of training on police practices.<sup>94</sup> The Center for Policing Equity also recommends rigorous post-training testing to determine whether officers' perceptions and attitudes change as a result of training.<sup>95</sup> Supervisors should maintain accurate attendance records to ensure that officers complete required training.

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## **RECOMMENDATION 2.3**

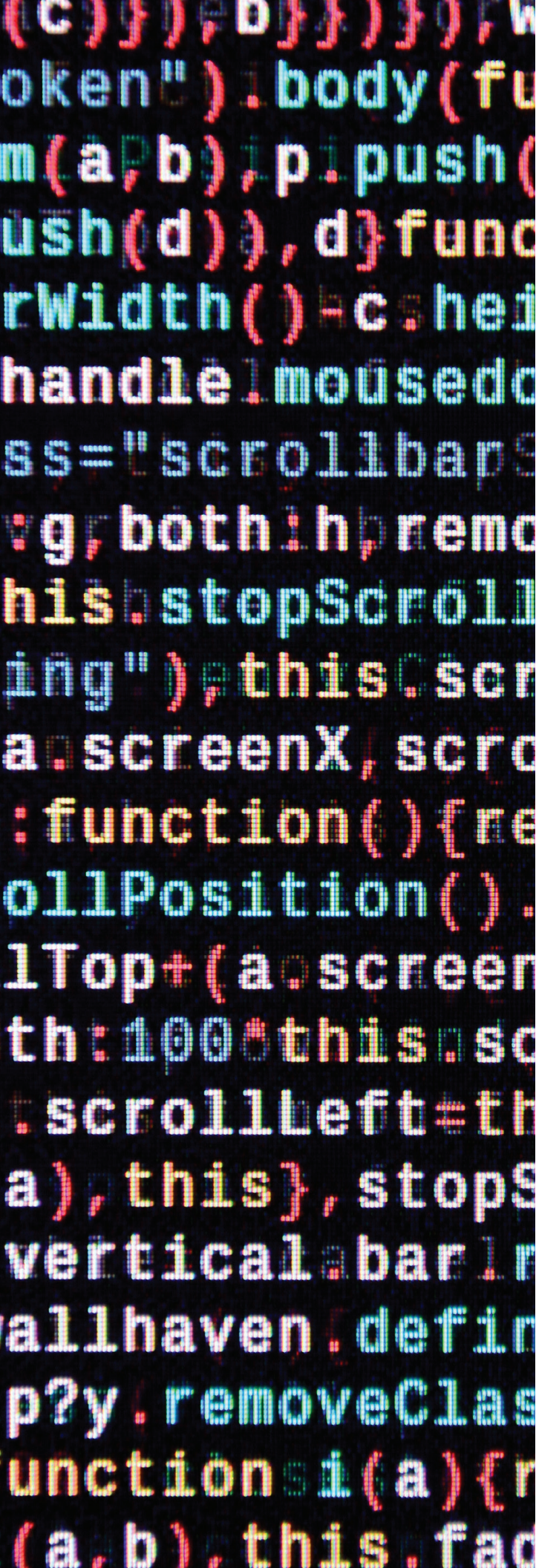
### **SUPERVISE, MONITOR, AND HOLD OFFICERS ACCOUNTABLE FOR POLICY VIOLATIONS.**

Creating a departmental culture of bias-free policing requires consistent, proactive supervision. Supervisors should monitor officers under their command for biased or discriminatory behavior, investigate complaints of bias, and impose discipline when required.

Direct supervisors are primarily responsible for ensuring that officers are policing in a bias-free manner. They also have enormous influence over officers and are able to shape their beliefs and attitudes about policing and police practices. In other words, they set the departments' tone and create its culture. (For more detail, see Chapter 9.) Leaders should make sure that all officers under their command understand the department's bias-free policies<sup>96</sup> and have been trained to police accordingly, and they should monitor officers to detect behavior that conflicts with bias-free policies and/or violates constitutional and legal requirements.<sup>97</sup>

Specifically, supervisors should observe officers daily, check in regularly, and conduct periodic reviews of body-worn camera and dashcam footage.<sup>98</sup> They should also review officers' enforcement activities and analyze other data (e.g., complaints) to detect and respond to indications of bias-based policing.<sup>99</sup> Supervisors who discover that officers have violated policy should immediately address it and impose proper discipline, such as retraining, counseling or other remedial intervention,<sup>100</sup> mediation, and, when warranted, termination.<sup>101</sup>

As noted above, departments should (1) ensure that people within and outside of the department are able to easily file complaints and (2) prohibit retaliation against those who do. Departments should make complaint forms available at police stations, in community centers, libraries, and other community spaces, and they should post them online in alternative and accessible formats. Complaint forms should also be available upon request.



When departments receive complaints alleging bias or discrimination, they should prioritize them, notify supervisors, and conduct thorough investigations.<sup>102</sup> Complaints alleging bias should be classified as discrimination. Supervisors should investigate all complaints of discrimination and bias in a timely manner and impose appropriate discipline, including termination when warranted. Supervisors who fail to do so should be subject to discipline.<sup>103</sup> (For more detail, see Chapter 7.)

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## RECOMMENDATION 2.4 TAKE CORRECTIVE ACTION WHEN DATA INDICATE BIAS-BASED POLICING.

In addition to preventing biased conduct at the individual level, department leaders should also prevent it at the department level. They should look for indications of bias-based policing and practices that have a disparate impact on marginalized communities, and they should take corrective action when found. Specifically, supervisors should:

**Evaluate policies, training, and enforcement data.** To prohibit and prevent discriminatory policing, bias-free policies generally address conduct at the individual level. These policies focus in part on intentional, or explicit, bias and unintentional, or implicit, bias. Nevertheless, even the strongest policies can't prevent all biased outcomes. As the Seattle Police

Department's bias-free policy states: "The long-term impacts of historical inequality and institutional bias could result in disproportionate enforcement, even in the absence of intentional bias."<sup>104</sup>

The absence of policies and/or underenforcement of the law can also contribute to disparate impacts. Departments that lack policies about how to interact with people with limited English proficiency, or who fail to train officers to provide language assistance, deny LEP individuals equal police services.<sup>105</sup> Likewise, failure to investigate allegations of sexual assault or intimate partner violence disproportionately impacts women and LGBTQ people.

To reduce disparities, department leaders should periodically review, analyze, and evaluate training programs and curricula and data about enforcement activities (e.g., stops, searches, and arrests, the number of complaints, community feedback, etc.).<sup>106</sup> If statistical or other data indicate that a facially neutral policy is producing disparities or negative perceptions, leaders should review and evaluate — and possibly rescind — it, and they should consider updating training curricula to address practices that lead to disparities. When policies or practices are found to have a disparate impact or produce discriminatory outcomes, leaders should work with communities and other stakeholders (e.g., businesses or police affinity groups) to explore alternatives.<sup>107</sup>

### **Require supervisory review and approval for enforcement of minor offenses that involve a large degree of discretion.**

Racial and other disparities often arise when officers are enforcing minor incidents, which involve a high degree of discretion. Officers sometimes stop or ticket people for no reason other than they've stereotyped them. Departments can remedy this problem by removing discretion from activities where bias heavily influences decisions to enforce. By requiring supervisory approval and review before acting (e.g., before an officer arrests someone for disorderly conduct), departments can reduce bias-based enforcement and ensure that officers take action with a legal basis and in a bias-free manner.

The Baltimore Police Department took steps to achieve this goal after the DOJ found that its officers arrested Black people in disproportionately high numbers. The investigation found that Black people comprised 88 to 91 percent of arrests for "quality-of-life" offenses, such as resisting an officer, disorderly conduct, failure to obey, and misdemeanor trespassing.<sup>108</sup> In response, department leaders required officers to get supervisory approval before making arrests for minor offenses.<sup>109</sup> The Newark Police Department also requires supervisors to respond to the scene and approve any arrests for minor offenses.<sup>110</sup> This policy serves as a check on officers and helps ensure that arrests are lawful and based on probable cause.



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## **RECOMMENDATION 2.5 ADDRESS COMPLAINTS AND CALLS FOR SERVICE BASED ON RACIAL AND ETHNIC PROFILING.**

To create a culture in which discrimination and bias are not tolerated, department leaders should promote equity and fairness in all department actions and responses.

To restore trust and confidence in policing, departments should address officer biases but also take into account how bias-based policing affects communities — as well as community perceptions of police. To build credibility and promote bias-free policing, leaders should take a firm stand against discrimination and bias not only within their departments but also within their communities. Promoting bias-free policing internally will, in short, promote it externally.

Police officers face serious challenges when asked to intervene in situations motivated by bias, such as calls to respond to people who are engaging in ordinary, innocuous activities. To cite a few recent cases, White people have recently asked police officers to respond to Black people sitting in a coffee shop, barbecuing at a park, and sleeping in a college library.<sup>111</sup>

Officers are required to respond to such calls, but they should take special care when doing so. Officers who know ahead of time that the complaint or allegation is the result of bias are best-positioned to respond properly. Thus, departments need clear policies about

how to respond. The Baltimore Police Department's bias-free policy prohibits officers from taking any "law enforcement action based on information from members of the public that they know or should know is the product of, or motivated by, bias based on any ... personal characteristics[.]"<sup>112</sup> Departments also need procedures to identify bias-based calls. Dispatchers should vet calls so officers know what to expect and don't become tools of discrimination.

When responding to bias-based calls, officers should maintain a professional and courteous manner and avoid making presumptions about people involved. Officers should employ procedural justice techniques and explain why they are there, ask questions and listen to both parties, defuse the situation, and, if bias is the apparent motivation, end the interaction and explain that no violation has occurred and that the people have a right to proceed as before. If the basis for the call is technically legal, such as a permit requirement, officers can inform complainants that they are aware of the violation and have declined to enforce it. In general, departments should not allow people to use police officers as instruments of discrimination; when this happens, it delegitimizes police and strains relationships. Communities and departments should work together to craft procedures for addressing this issue.

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## **RECOMMENDATION 2.6 IDENTIFY AND INVESTIGATE HATE CRIMES.**

In 2017, the number of hate crimes in the United States jumped 17 percent over 2016 (from 6,121 to 7,175 incidents), continuing an upward trend for the third straight year.<sup>113</sup> These numbers likely understate the true number of hate crimes; victims are often too scared to report them and police departments sometimes miscategorize them. To practice bias-free policing, departments should encourage reporting of hate crimes and educate communities about hate crime law.<sup>114</sup>

Officers should also take preventive steps by reaching out to communities targeted by hate-based violence and harassment, which will open channels of communication and reassure people that they take this type of victimization seriously.<sup>115</sup> Officers should also assuage fears by communicating that reporting hate crimes won't have negative consequences (e.g., that undocumented people won't be deported if they file hate crime reports). Community outreach also raises awareness about hate crimes and signals that departments view officers as guardians of public safety and that all people deserve equal treatment under the law.

Hate crimes investigators, meanwhile, should know which hate groups are active in the community and be familiar with hate signs and symbols. They should also be

trained to understand survivors' experiences with and responses to trauma and to respond appropriately when interacting with survivors during investigations.<sup>116</sup>

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## **RECOMMENDATION 2.7 COLLECT, ANALYZE, AND PUBLICLY REPORT DATA RELATING TO BIAS- BASED POLICING.**

A critical part of identifying bias-based policing is through audits of departments' complaint and data systems. Without this knowledge, departments can't identify biased-based policing or take measures to assess behavioral change and correct problems, and communities can't address problematic practices.

Collecting enforcement data is not controversial: Roughly 20 states have passed statutes mandating that law enforcement agencies collect data about stops by race.<sup>117</sup> In the absence of state legislation, departments should collect and analyze enforcement and complaint data (including data about stops, searches, arrests, and uses of force). Data forms should be practical, and officers should not be asked to produce unnecessary paperwork. They should include demographic information, such as perceived gender, race or ethnicity, national origin, and age,<sup>118</sup> but not personal characteristics, such as LGBTQ status, religion, or immigration status — unless this information is offered voluntarily and is relevant to the incident (e.g., a hate crime).<sup>119</sup>



To ensure enforcement activities don't have biased outcomes, departments should also collect data such as the location, duration, and reason for a stop, whether a consent search was performed, and disposition (i.e., whether a citation was issued or an arrest was made).<sup>120</sup>

Data analysis enables departments to identify disparities, patterns, and trends that may warrant intervention, as well as statistical outliers (i.e., officers who receive more complaints than their peers). The New Orleans Police Department has a robust data policy. It requires the deputy superintendent to analyze data about programs and activities on an annual basis to ensure they're not applied or administered in a discriminatory manner against marginalized groups.<sup>121</sup> The data include complaints involving discrimination, uses of force, stops, and arrests, and geographical deployment tactics and strategies that may be based on stereotypes or biases toward residents.<sup>122</sup>

Departments should also measure enforcement activities before and after implementing bias-free policies and training to determine whether they led to changes in conduct. Departments that don't collect enforcement and demographic data or that have unreliable data should assess data collection processes and establish protocols to ensure that data are accurate and reliable.

Transparency is essential to building public trust and legitimacy, and data are useful only insofar as they can be used to drive policy change. For this reason, departments should require data analysis and make data publicly available by posting them online and making them available in alternative and accessible formats.<sup>123</sup> Departments should also issue reports providing assessments of data. If data show patterns of bias-based policing, ensuing reports should include steps that the department will take to rectify the problem.





## RECOMMENDATION 2.8 CREATE CULTURES OF INCLUSIVITY AND ACCOUNTABILITY AND DIVERSE WORKPLACES.

To promote bias-free policing, police leaders should understand how discrimination and biases affect internal decision-making and officer morale. Treating officers unfairly or in a prejudiced manner, or even creating the perception of unfair treatment, affects officer conduct and interactions with the public.<sup>124</sup> Department leaders should strive to eliminate racial, ethnic, gender, and other biases to create work environments that truly include all members. (For more detail, see Chapter 9.) They should send a clear message that discrimination, bias, and harassment are not tolerated externally in policing practices. And they should ensure this message is reflected internally as well, in policies and practices relating to discipline, accountability, opportunities for professional development, promotions, and other areas.

Clear and transparent policies and swift discipline of discriminatory and bias-based policing signal to officers and the community that the department is committed to fairness and equity. (For more detail, see Chapter 7.) Department leaders can create cultures of inclusivity and accountability and enhance workforce diversity by encouraging ties with affinity groups and by mentoring young people from groups that have historically been underrepresented in policing. (For more detail, see Chapter 10.) Department leaders and supervisors should also listen to officers about their experiences and incorporate their input into their decision-making processes. (For more detail, see Chapter 9.)



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## RECOMMENDATION 2.9

### WORK FOR BROAD SOCIAL CHANGE.

Leaders and officers can reduce bias-based policing in their departments and communities, but only broad social and cultural change will prevent future generations of officers from developing negative implicit biases about social groups.<sup>125</sup> Indeed, racism and bias are not the result of law enforcement practices and attitudes alone; they are a reflection of the social systems that create and perpetuate them.<sup>126</sup> To begin to change the broader social systems within which they operate, police leaders and officers should first acknowledge the role of police in maintaining and enforcing laws and systems built on racism and oppression. (For more detail, see Chapter 1.)

Police leaders and officers should partner with communities impacted by discriminatory policing to support change at the local, state, and federal levels to end discriminatory practices, such as the use of pretextual stops. (For more detail, see Chapter 3.) They should also support measures that address the societal factors that influence criminal behavior, such as homelessness, poverty, and access to health care, and solutions that prevent crime, such as increased social services and economic opportunities. And they should support efforts to reform the criminal justice system, such as decriminalizing marijuana possession and other low-level offenses; eliminating or reducing fines for low-level offenses; and emphasizing rehabilitation over punishment through deflection programs that connect people in crisis to needed services and diversion programs that reduce involvement with the criminal justice system. (For more detail, see Chapter 5.)

Ending bias takes more than changing laws; it takes changing minds. Departments can join broader efforts to change narratives around crime and those associated with it: namely, low-income people and people of color. Understanding and talking about challenges in a holistic manner — and in a way that acknowledges the structural racism underpinning social problems — will advance broad social reform. In sum, preventing discriminatory policing doesn't only require changing police policies and practices and implementing new training. It also requires a larger effort to create a fairer and more just society. Police leaders and officers have a tremendous amount of influence in their communities, and they should use it strategically to address the societal causes and consequences of bias — and to build a better, less-biased world.







# Chapter 2

- <sup>1</sup> See Ezekiel Edwards, Will Bunting & Lynda Garcia, *Am. Civ. Liberties Union, The War on Marijuana in Black and White 4* (June 2013) (finding, "... a Black person is 3.73 times more likely to be arrested for marijuana possession than a white person, even though Blacks and whites use marijuana at similar rates."), <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>; Lynn Langton & Matthew Durose, U.S. Dep't of Justice, Bureau of Justice Statistics, *Police Behavior During Traffic and Street Stops* (2011 rev. Oct. 27, 2016), <https://www.bjs.gov/content/pub/pdf/pbtss11.pdf>; NAACP, *Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America 9* (2014) (discussing national data on racial profiling that show "racial profiling happened to men, women, and children of all ages and socio-economic backgrounds, and in virtually every context of people's lives: on the streets, inside cars, at home, at airports, at shopping centers, and at places of worship"), [https://www.naacp.org/wp-content/uploads/2018/07/Born\\_Suspect\\_Report\\_final\\_web.pdf](https://www.naacp.org/wp-content/uploads/2018/07/Born_Suspect_Report_final_web.pdf); N.Y. Civ. Liberties Union, *Stop-and-Frisk Data* (noting that "[n]early nine out of 10 stopped-and-frisked New Yorkers have been completely innocent and "black and Latino communities continue to be the overwhelming target of these tactics"), <https://www.nyclu.org/en/stop-and-frisk-data> (last accessed Dec. 17, 2018); Wesley Lowery, *New Study: Only 24% of Population, Blacks in Boston Make Up 63% of Stop and Frisk Encounters*, *Wash. Post*, Oct. 8, 2014, [https://www.washingtonpost.com/news/post-nation/wp/2014/10/08/new-study-only-24-of-population-blacks-in-boston-make-up-63-of-stop-and-frisk-encounters/?utm\\_term=.352c97f03c03](https://www.washingtonpost.com/news/post-nation/wp/2014/10/08/new-study-only-24-of-population-blacks-in-boston-make-up-63-of-stop-and-frisk-encounters/?utm_term=.352c97f03c03).
- <sup>2</sup> U.S. Dep't of Justice, Nat'l Inst. of Justice, *Race, Trust and Police Legitimacy*, <https://www.nij.gov/topics/law-enforcement/legitimacy/Pages/welcome.aspx> (last visited Jan. 23, 2019).
- <sup>3</sup> See, e.g., Jeffrey A. Fagan et al., *Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City*, in *Race, Ethnicity, and Policing: New and Essential Readings 309-10* (Stephen K. Rice & Michael D. White eds., N.Y. Univ. Press 2010) (describing the origins of the NYPD's stop-and-frisk program and its disproportionate effects on people of color); U.S. Dep't of Justice, Civil Rights Div., *Investigation of the Ferguson Police Department 62* (2015) ("Despite making up 67% of the population, African Americans accounted for 85% of FPD's traffic stops, 90% of FPD's citations, and 93% of FPD's arrests from 2012 to 2014."), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf); Kara Dansky, *Am. Civ. Liberties Union, War Comes Home: The Excessive Militarization of American Policing 35-37* (2014) (explaining that Special Weapons and Tactics (SWAT) deployments primarily and disproportionately target communities of color), <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police>.
- <sup>4</sup> See, e.g., Christy Mallory, Amira Hasenbush & Brad Sears, *Williams Inst., UCLA, Discrimination and Harassment by Law Enforcement Officers in the LGBT Community 8* (Mar. 2015) (describing the impact of officer discrimination and harassment on the LGBTQ community), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf>.
- <sup>5</sup> Sue Rahr & Stephen K. Rice, *New Perspectives in Policing: From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals* (Apr. 2015), <https://www.ncjrs.gov/pdffiles1/nij/248654.pdf>.
- <sup>6</sup> Lorie Fridell et. al., *Police Exec. Res. Forum, Racially Biased Policing: A Principled Response*, at x (2001), <https://ric-zai-inc.com/Publications/cops-w0172-pub.pdf>.
- <sup>7</sup> See Jody Feder, *Cong. Res. Serv., Racial Profiling: Legal and Constitutional Issues 1* (Apr. 16, 2012) ("Racial profiling is the practice of targeting individuals for police or security detention based on their race or ethnicity in the belief that certain minority groups are more likely to engage in unlawful behavior."), <https://fas.org/sgp/crs/misc/RL31130.pdf>.
- <sup>8</sup> See Sarah E. Burke et. al., *Informal Training Experiences and Explicit Bias Against African Americans Among Medical Students*, 80(1) *Soc. Psychol. Q.* 65 (2017) (finding that explicit racial biases predict discriminatory behavior in a wide range of contexts), <https://journals.sagepub.com/doi/full/10.1177/0190272516668166>.
- <sup>9</sup> *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 265-66 (1977).
- <sup>10</sup> See Bertram Gawronski & Galen V. Bodenhausen, *Associative and Propositional Processes in Evaluation: An Integrative Review of Implicit and Explicit Attitude Change*, 132 *Psychol. Bull.* no. 5 692, 693 (2006) ("[E]valuative tendencies resides in associative processes, which build the basis for ... implicit attitudes. Associative evaluations are best characterized as automatic affective reactions resulting from the particular associations that are activated automatically when one encounters a relevant stimulus. Such activation processes do not require much cognitive capacity or an intention to evaluate an object[.]" ), <http://www.bertramgawronski.com/documents/GB2006PB.pdf>.
- <sup>11</sup> See Newark Police Div., *General Order 17-06 Re: Bias-Free Policing 2* (Sept. 19, 2017), [https://nhd.newarkpublicsafety.org/assets/docs/consent\\_decree/approved\\_policies/bias-free-policing-1706.pdf](https://nhd.newarkpublicsafety.org/assets/docs/consent_decree/approved_policies/bias-free-policing-1706.pdf).
- <sup>12</sup> See generally Daniel Kahneman, *Thinking, Fast and Slow* (2011).
- <sup>13</sup> Pamela M. Casey et al., *Helping Courts Address Implicit Bias: Resources for Education 1-2* (2012), <https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/246/>.
- <sup>14</sup> Gawronski, *supra* note 11.

<sup>15</sup> See Jenessa R. Shapiro et. al., *Look Black in Anger: The Role of Implicit Prejudice in the Categorization and Perceived Emotional Intensity of Racially Ambiguous Faces*, 35 *Personality and So. Psychol. Bull.* 1356 (Oct. 2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2798889/>; Paul B. Hutchings & Geoffrey Haddock, *Look Black in Anger: The Role of Implicit Prejudice in the Categorization and Perceived Emotional Intensity of Racially Ambiguous Faces*, 44 *J. Exp. Soc. Psychol.* 1418, 1420 (2008) (finding that “White participants high in implicit prejudice were significantly more likely to classify an angry ambiguous face as being Black compared to participants low in implicit prejudice.”), [https://www.researchgate.net/publication/222413010\\_Look\\_Black\\_in\\_Anger\\_The\\_Role\\_of\\_Implicit\\_Prejudice\\_in\\_the\\_Categorization\\_and\\_Perceived\\_Emotional\\_Intensity\\_of\\_Racially\\_Ambiguous\\_Faces](https://www.researchgate.net/publication/222413010_Look_Black_in_Anger_The_Role_of_Implicit_Prejudice_in_the_Categorization_and_Perceived_Emotional_Intensity_of_Racially_Ambiguous_Faces).

<sup>16</sup> See Joshua Correll & Tracie Keese, *Racial Bias in the Decision to Shoot?*, 76 *Police Chief* (May 2009) (“The study found that ... Denver police officers ... showed significant bias in their reaction times” in a study where participants were given the computer task of deciding whether to shoot a series of White or Black male targets.); Brian Keith Payne, *Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon*, 81 *J. Pers. & Soc. Psychol.* 181, 190 (2001) (noting that “research strongly support[s] the hypothesis that the race of faces paired with objects does influence the perceptual identification of weapons”), [https://www.researchgate.net/publication/11825666\\_Prejudice\\_and\\_Perception\\_The\\_Role\\_of\\_Automatic\\_and\\_Controlled\\_Processes\\_in\\_Misperceiving\\_a\\_Weapon](https://www.researchgate.net/publication/11825666_Prejudice_and_Perception_The_Role_of_Automatic_and_Controlled_Processes_in_Misperceiving_a_Weapon). Recent studies indicate that training is having a positive effect, however, as officers exhibit less racial bias in shoot/don’t shoot decisions. See Tom Jackman, *This Study Found Race Matters in Police Shootings, but the Results May Surprise You*, *Wash. Post* (Apr. 27, 2016), [https://www.washingtonpost.com/news/true-crime/wp/2016/04/27/this-study-found-race-matters-in-police-shootings-but-the-results-may-surprise-you/?noredirect=on&utm\\_term=.851d3a6b68be](https://www.washingtonpost.com/news/true-crime/wp/2016/04/27/this-study-found-race-matters-in-police-shootings-but-the-results-may-surprise-you/?noredirect=on&utm_term=.851d3a6b68be).

<sup>17</sup> See Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 *Stan. L. Rev.* 317, 355 (Jan. 1987) (“[R]ecognizing unconscious racism provides a mechanism for effectively responding to continuing race-based inequalities[.]”).

<sup>18</sup> David Edmonds, *Implicit Bias: Is Everyone Racist?*, *BBC Magazine* (June 5, 2017), <https://www.bbc.com/news/magazine-40124781>.

<sup>19</sup> See *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886) (concluding that the Fourteenth Amendment guarantees equal protection of the laws “without regard to any differences of race, of color, or of nationality”); see also *Whren v. United States*, 517 U.S. 806, 813 (1996) (affirming that the Fourteenth Amendment prohibits selective or discriminatory enforcement of the law); 42 U.S.C. § 2000a et seq. (prohibiting discrimination based on race, religion, or national origin).

<sup>20</sup> See U.S. Dep’t of Justice, *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence* 23 (2015), <https://www.justice.gov/crt/file/799316/download>; *Whren v. United States*, 517 U.S. 806, 813 (1996).

<sup>21</sup> See *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977) (requiring strict judicial review of any government action upon finding “proof that a discriminatory purpose has been a motivating factor” in government decision-making); *Melendres v. Arpaio*, 989 F. Supp. 2d 822, 910 (D. Ariz. 2013), *aff’d*, 784 F.3d 1254 (9th Cir. 2015) (directing the Maricopa County Sheriff’s Office to remedy its Fourteenth Amendment violations and to cease “using race or Latino ancestry as a factor” in stopping vehicles and making law enforcement decisions).

<sup>22</sup> *Griggs v. Duke Power Co.*, 401 U.S. 424, 429–30 (1971) (noting that facially neutral practices and procedures are not immune from judicial scrutiny if they operate in a racially discriminatory manner).

<sup>23</sup> *Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project*, 135 S. Ct. 2507, 2513 (2015).

<sup>24</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540, 558 (S.D.N.Y. 2013) (“Because there is rarely direct proof of discriminatory intent, circumstantial evidence of such intent is permitted.”).

<sup>25</sup> *Village of Arlington Heights*, *supra* note 10, at 266 (“Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.”).

<sup>26</sup> See *Village of Arlington Heights*, *supra* note 10, at 265–66; see also *Inclusive Cmty. Project*, 135 S. Ct. at 2513 (quoting *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009)). Note that under the disparate impact analysis, plaintiffs must also prove that any legitimate, nondiscriminatory interest served by the practice could be served by a less discriminatory alternative policy. *Inclusive Cmty. Project*, 135 S. Ct. at 2514–15.

<sup>27</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540, 662 (S.D.N.Y. 2013).

<sup>28</sup> *Id.* at 560, 573–74, 589.

<sup>29</sup> *Id.* at 606, 660–61, 664.

<sup>30</sup> *Id.* at 667, 676–77, 686–88.

<sup>31</sup> *Melendres v. Arpaio*, 989 F. Supp. 2d 822, 827, 848–9, 910 (D. Ariz. 2013), *aff’d*, 784 F.3d 1254 (9th Cir. 2015).

<sup>32</sup> *Id.* at 859, 903–04.

<sup>33</sup> *Id.* at 899–902.

<sup>34</sup> Richard Perez-Peña, *Former Arizona Sheriff Joe Arpaio Is Convicted of Criminal Contempt*, *N.Y. Times* (July 31, 2017), <https://www.nytimes.com/2017/07/31/us/sheriff-joe-arpaio-convicted-arizona.html>; *Devilin Barrett & Abby Phillip, Trump Pardons Former Arizona Sheriff Joe Arpaio*, *Wash. Post* (Aug. 25, 2017), [https://www.washingtonpost.com/world/national-security/trump-pardons-former-arizona-sheriff-joe-arpaio/2017/08/25/afbff4b6-86b1-11e7-961d-2f373b3977ee\\_story.html?utm\\_term=.8e5f3034f5cf](https://www.washingtonpost.com/world/national-security/trump-pardons-former-arizona-sheriff-joe-arpaio/2017/08/25/afbff4b6-86b1-11e7-961d-2f373b3977ee_story.html?utm_term=.8e5f3034f5cf).



<sup>35</sup> Civil Rights Div., Dep't of Justice, Title VI Legal Manual Section VII Proving Discrimination – Disparate Impact 2 (citing *Griggs v. Duke Power Co.*, 401 U.S. 424, 430–31 (1971), <https://www.justice.gov/crt/case-document/file/934826/download> (last visited Feb. 11, 2019)); *City of Rome v. United States*, 446 U.S. 156, 176–77 (1980); *Gaston Cty. v. United States*, 395 U.S. 285, 297 (1969)).

<sup>36</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

<sup>37</sup> Civil Rights Act of 1964, Pub. L. No. 88-352; Voting Rights Act of 1965, Pub. L. 89-110; Fair Housing Act (Civil Rights Act of 1968 Tit. VIII), Pub. L. 90-284.

<sup>38</sup> Tracy Jan, *Redlining Was Banned 50 Years Ago. It's Still Hurting Minorities Today*, *Wash. Post* (Mar. 28, 2018), [https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/?utm\\_term=.3b93fa5e56d0](https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/?utm_term=.3b93fa5e56d0); U.S. Dep't of Hous. and Urb. Dev., *Unequal Burden: Income and Racial Disparities in Subprime Lending in America* (2000), [https://www.huduser.gov/Publications/pdf/unequal\\_full.pdf](https://www.huduser.gov/Publications/pdf/unequal_full.pdf); see also U.S. Dep't of Justice, Civil Rights Div., *Investigation of the Baltimore City Police Department 12* (2016) (discussing Baltimore's history of redlining and segregation and its effect on communities of color), <https://www.justice.gov/crt/file/883296/download>; see also Ta-Nahisi Coates, *The Case for Reparations*, *The Atlantic* (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> (discussing the collective and multiplying effects of racial segregation, race-based policies, and subprime lending on Black communities).

<sup>39</sup> See, Coates, *The Case for Reparations*, *supra* note 38.

<sup>40</sup> U.S. Dep't of Justice, Civil Rights Div., *Investigation of the Baltimore City Police Department 70-72* (2016), <https://www.justice.gov/crt/file/883296/download>.

<sup>41</sup> *Id.* at 24-27.

<sup>42</sup> Phillip Atiba Goff, *On Stop-and-Frisk, We Can't Celebrate Just Yet*, *N.Y. Times* (Jan. 7, 2018), <https://www.nytimes.com/2018/01/07/opinion/stop-and-frisk-celebrate.html>; Amanda Geller et al., *Police Contact and Mental Health*, *Colum. Pub. L. Res. Paper No. 14-571 2* (2017) (reporting that “the broader implications of police activity beyond crime control” had largely evaded academic review), [https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3079&context=faculty\\_scholarship](https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3079&context=faculty_scholarship); Nat'l Acad. of Sci., Eng'g, and Med., *Proactive Policing: Effects on Crime and Communities 315* (2018) (more aggressive policing tactics that are focused on individuals may have negative outcomes on those who have contact with the police.), <https://www.nap.edu/read/24928/chapter/10#315>.

<sup>43</sup> Amanda Geller et al., *Police Contact and Mental Health*, *Colum. Pub. L. Res. Paper No. 14-571 25-26, 30* (2017), [https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3079&context=faculty\\_scholarship](https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3079&context=faculty_scholarship).

<sup>44</sup> Amy E. Lerman & Vesla M. Weaver, *Arresting Citizenship: The Democratic Consequences of American Crime Control 10* (2014), [https://books.google.com/books?hl=en&l-r=&id=CWvYAwwAAQBAJ&oi=fnd&pg=PR7&d-q=weaver+lerman&ots=ID-f8MeB27R&sig=pK21Y7FAE9ZOHduDK-pc0s9Cx0\\_Y#v=one-page&q=weaver%20lerman&f=false](https://books.google.com/books?hl=en&l-r=&id=CWvYAwwAAQBAJ&oi=fnd&pg=PR7&d-q=weaver+lerman&ots=ID-f8MeB27R&sig=pK21Y7FAE9ZOHduDK-pc0s9Cx0_Y#v=one-page&q=weaver%20lerman&f=false).

<sup>45</sup> Phillip Atiba Goff, *On Stop-and-Frisk, We Can't Celebrate Just Yet*, *N.Y. Times* (Jan. 7, 2018) (lamenting the lack of research on the collective consequences of negative contact with the police), <https://www.nytimes.com/2018/01/07/opinion/stop-and-frisk-celebrate.html>; Geller, *supra* note 44, at 2 (reporting that “the broader implications of police activity beyond crime control” had largely evaded academic review).

<sup>46</sup> Victoria McKenzie, *The Dirty Data Feeding Predictive Police Algorithms*, *The Crime Report* (Aug. 18, 2017), <https://thecrimereport.org/2017/08/18/does-predictive-policing-mathwash-bias/>.

<sup>47</sup> *Id.*

<sup>48</sup> Danielle Ensign et al., *Runaway Feedback Loops in Predictive Policing*, 81 *Proc. of Mach. Learning Res.* 1 (2018), <https://arxiv.org/pdf/1706.09847.pdf>.

<sup>49</sup> Greg Ridgeway et. al., *U.S. Dep't of Justice, Community Oriented Policing Services, An Examination of Racial Disparities in Bicycle Stops and Citations Made by the Tampa Bay Police 3* (2016), <https://ric-zai-inc.com/Publications/cops-w0801-pub.pdf>.

<sup>50</sup> *Id.* at 3.

<sup>51</sup> See Policing Project, *N.Y.U. School of Law, An Assessment of Traffic Stops and Policing Strategies in Nashville 11* (2018), <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5bf2d18d562fa747a554f6b0/1542640014294/Policing+Project+Nashville+Report.pdf>.

<sup>52</sup> See, e.g., Baltimore Police Dep't, *About Us: Mission Statement* (last visited Feb. 11, 2019), <https://www.baltimorepolice.org/about-department>.

<sup>53</sup> As a practical matter, state laws may prohibit discrimination against broader protected classes. See, e.g., *Virginia Human Rights Act*, Va. Code §§ 2.2-3900-3 (2019), <https://law.lis.virginia.gov/vacodepopularnames/virginia-human-rights-act/> (including childbirth or related medical conditions, age, marital status, or disability as protected classes). Police department policies, however, can provide even broader protections.

<sup>54</sup> See, e.g., *Seattle Police Department Manual Section 5.140* (eff. July 15, 2018) [hereinafter SPD 5.140], <https://www.seattle.gov/police-manual/title-5---employee-conduct/5140---bias-free-policing>.

<sup>55</sup> Newark Police Div., *supra* note 11, at 5.

<sup>56</sup> Newark Police Div., *supra* note 12, at 5.

<sup>57</sup> See New Orleans Police Dep't, *Operations Manual Chapter 41.13: Bias Free Policing 5* (eff. July 10, 2016) [hereinafter New Orleans 41.13], <https://www.nola.gov/getattachment/NOPD/Policies/Bias-Free.pdf>.

<sup>58</sup> See, e.g., SPD 5.140, *supra* note 54.

<sup>59</sup> See Baltimore Police Dep't, Draft Policy 317: Fair and Impartial Policing 4-5 (Aug 24, 2018), <https://www.baltimorepolice.org/317-draft-fair-and-impartial-policing>; Maricopa County Sheriff's Office, Policy EB-1 Traffic Enforcement, Violator Contacts, and Citation Issuance 2 (eff. Jan. 11, 2018) (prohibiting bias-based profiling and requiring deputies have articulable, reasonable suspicion of a traffic violation or criminal involvement before stopping a vehicle), <https://www.mcso.org/documents/Policy/Patrol/EB-1.pdf>.

<sup>60</sup> Baltimore Police Dep't, Draft Policy 317: Fair and Impartial Policing 7 (Aug 24, 2018) [hereinafter Baltimore Draft Policy 317], <https://www.baltimorepolice.org/317-draft-fair-and-impartial-policing>.

<sup>61</sup> Maricopa County Sheriff's Office, Policy EB-1 Traffic Enforcement, Violator Contacts, and Citation Issuance 2, 5 (eff. Jan. 11, 2018), <https://www.mcso.org/documents/Policy/Patrol/EB-1.pdf>.

<sup>62</sup> See *Bell v. Maryland*, 378 U.S. 226, 309 (1964) (Goldberg, J. concurring) ("[D]enying the equal protection of the laws includes the omission to protect.") (internal quotation marks omitted).

<sup>63</sup> See, e.g., Baltimore Draft Policy 317, *supra* note 60, at 2; Newark Police Div., *supra* note 11, at 4.

<sup>64</sup> New Orleans 41.13, *supra* note 57, at 3 (The prohibition against collecting information about sexual orientation or gender identity is to avoid the risk of retaliation or unauthorized disclosure of the information); see James Copple & Patricia Dunn, U.S. Dep't of Justice, Community Oriented Policing Services, Gender, Sexuality, and 21st Century Policing, Protecting the Rights of LGBTQ+ Community 8 (2017), <https://ric-zai-inc.com/Publications/cops-w0837-pub.pdf>; see also New Orleans Police Dep't, Operations Manual Chapter 41.6.1: Immigration Status (eff. Feb. 28, 2016), <http://nowcrj.org/wp-content/uploads/2016/02/NOPD-anti-bias-policing-policy-Feb-2016.pdf>.

<sup>65</sup> Baltimore Draft Policy 317, *supra* note 60, at 6 (Aug 24, 2018).

<sup>66</sup> See, e.g., Letter from Jocelyn Samuels & Michael Cotter to Fred Van Valkenburg, Missoula County Attorney, Re: The United States' Investigation of the Missoula County Attorney's Office 2 (Feb. 14, 2014) (finding the Missoula County Attorney's Office failure to respond to and investigate rape and sexual assault cases to be fueled in part by gender bias), [https://www.justice.gov/sites/default/files/crt/legacy/2014/02/19/missoula\\_ltr\\_2-14-14.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2014/02/19/missoula_ltr_2-14-14.pdf).

<sup>67</sup> U.S. Dep't of Justice, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence 11, 14 (2015) [hereinafter Preventing Gender Bias] (noting that a woman's involvement in sex work should not bear on the officer's determination of her credibility or that she can't be assaulted), <https://www.justice.gov/crt/file/799316/download>.

<sup>68</sup> For a full list, see Int'l Ass'n of Chiefs of Police, Addressing Sexual Offenses and Misconduct by Law Enforcement 3-4 (June 2011) [hereinafter IACP Addressing Sexual Offenses], <https://www.theiacp.org/sites/default/files/all/a/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>.

<sup>69</sup> See Int'l Ass'n of Chiefs of Police, Sexual Assault Response Policy and Training Content Guidelines 10, 21, <https://www.theiacp.org/sites/default/files/all/i-/IACP%20Sexual%20Assault%20Response%20Policy%20and%20Training%20Content%20Guidelines.2017.3.23.pdf>. The International Association of Chiefs of Police lists intimate partner violence as a form of sexual assault. *Id.*

<sup>70</sup> See *Bell v. Maryland*, 378 U.S. 226, 309 (1964) (Goldberg, J. concurring) ("[D]enying the equal protection of the laws includes the omission to protect.") (internal quotation marks omitted); see also Dep't of Just., Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence 7 ("Acting on stereotypes about why women or LGBT individuals are sexually assaulted, or about how a victim of domestic violence or sexual assault should look or behave, can constitute unlawful discrimination and profoundly undermine an effective response to these crimes."), <https://www.justice.gov/crt/file/799316/download> at 7; Letter from Thomas Perez & Michael Cotter to Missoula Mayor John Engen, Re: The United States' Investigation of the Missoula Police Department (May 15, 2013) (finding equal protection violation where department failed to provide adequate services to sexual assault victims), [https://www.justice.gov/sites/default/files/crt/legacy/2013/05/22/missoulapdfind\\_5-15-13.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2013/05/22/missoulapdfind_5-15-13.pdf).

<sup>71</sup> Deborah Tuerkheimer, Underenforcement as Unequal Protection, 57 Boston Coll. L. Rev. 1287 (2016), [https://www.google.com/&httpsredir=1&article=3526&context=bclr](https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3526&context=bclr); *Estate of Macias v. Ihde*, 219 F.3d 1018 (9th Cir. 2000) ("There is a constitutional right, however, to have police services administered in a nondiscriminatory manner — a right that is violated when a state actor denies such protection to disfavored persons."); Julie Goldscheid et al., Responses from the Field: Sexual Assault, Domestic Violence, and Policing 8-9 (Oct. 2015), [https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1075&context=cl\\_pubs](https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1075&context=cl_pubs).

<sup>72</sup> Letter from Thomas Perez & Michael Cotter to Missoula Mayor John Engen, Re: The United States' Investigation of the Missoula Police Department 12, 14 (May 15, 2013), [https://www.justice.gov/sites/default/files/crt/legacy/2013/05/22/missoulapdfind\\_5-15-13.pdf](https://www.justice.gov/sites/default/files/crt/legacy/2013/05/22/missoulapdfind_5-15-13.pdf).

<sup>73</sup> See Preventing Gender Bias, *supra* note 67, at 21.

<sup>74</sup> Int'l Ass'n of Chiefs of Police Addressing Sexual Offenses, *supra* note 68, at 2.

<sup>75</sup> Preventing Gender Bias, *supra* note 67, at 10.

<sup>76</sup> Preventing Gender Bias, *supra* note 67, at 11-12.

<sup>77</sup> Phillip Stinson et. al., Police Integrity Lost: A Study of Law Enforcement Officers Arrested 22 (Jan. 2016), <https://www.ncjrs.gov/pdffiles1/nij/grants/249850.pdf>.

<sup>78</sup> Andrea J. Ritchie & Delores Jones-Brown, Policing Race, Gender, and Sex: A Review of Law, 27 Women and Crim. Just. 21, 33 (2017), <http://andrearitchie.com/wp-content/uploads/2017/05/Policing-Race-Gender-and-Sex-A-Review-of-Law-Enforcement-Policies.pdf>.

<sup>79</sup> Int'l Ass'n of Chiefs of Police Addressing Sexual Offenses, *supra* note 68, at 5-6.

- <sup>80</sup> The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 28, 58 (2015) [hereinafter President's Task Force Report], [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf); Int'l Ass'n of Chiefs of Police Addressing Sexual Offenses, *supra* note 68, at 5.
- <sup>81</sup> Int'l Ass'n of Chiefs of Police Addressing Sexual Offenses, *supra* note 68, at 4-6.
- <sup>82</sup> President's Task Force Report, *supra* note 80, at 28, 58.
- <sup>83</sup> President's Task Force Report, *supra* note 80, at 58.
- <sup>84</sup> New Orleans Police Dep't, Operations Manual Chapter 41.6.1: Immigration Status (eff. Feb. 28, 2016), <http://nowcrj.org/wp-content/uploads/2016/02/NOPD-anti-bias-policing-policy-Feb-2016.pdf>.
- <sup>85</sup> Metro. Police Dep't, General Order PCA 501-02 Handling Interactions with Transgender Individuals (eff. Jan. 5, 2015), [https://go.mpdconline.com/GO/GO\\_501\\_02.pdf](https://go.mpdconline.com/GO/GO_501_02.pdf).
- <sup>86</sup> President's Task Force Report, *supra* note 80, at 58.
- <sup>87</sup> See e.g., SPD 5.140, *supra* note 54.
- <sup>88</sup> New Orleans 41.13, *supra* note 57, at 4; see also Baltimore Draft Policy 317, *supra* note 59, at 7.
- <sup>89</sup> Newark Police Div., *supra* note 11, at 5; Baltimore Draft Policy 317, *supra* note 59, at 7.
- <sup>90</sup> Newark Police Div., *supra* note 11, at 7; Baltimore Draft Policy 317, *supra* note 59, at 6.
- <sup>91</sup> Newark Police Div., *supra* note 11, at 7.
- <sup>92</sup> See Baltimore Draft Policy 317, *supra* note 59, at 3-8; New Orleans 41.13, *supra* note 57, at 1-5.
- <sup>93</sup> Newark Police Div., *supra* note 11, at 5.
- <sup>94</sup> Tom James, Can Cops Unlearn Their Unconscious Bias?, *The Atlantic* (Dec. 23, 2017), <https://www.theatlantic.com/politics/archive/2017/12/implicit-bias-training-salt-lake/548996/>.
- <sup>95</sup> *Id.*
- <sup>96</sup> Baltimore Draft Policy 317, *supra* note 59, at 6.
- <sup>97</sup> New Orleans 41.13, *supra* note 57, at 5.
- <sup>98</sup> Baltimore Draft Policy 317, *supra* note 59, at 6.
- <sup>99</sup> Baltimore Draft Policy 317, *supra* note 59, at 7-8.
- <sup>100</sup> Baltimore Draft Policy 317, *supra* note 59, at 7.
- <sup>101</sup> Newark Police Div., *supra* note 11, at 7.
- <sup>102</sup> Baltimore Draft Policy 317, *supra* note 59, at 6 ("Each supervisor has an individual obligation to ensure the timely and complete review and documentation of all allegations of violations of this policy that are referred to them or of which they should reasonably be aware. Commanders and supervisors shall ensure that all allegations of violations of this policy will be entered into BlueTeam and forwarded to OPR by the end of their tour of duty.").
- <sup>103</sup> Baltimore Draft Policy 317, *supra* note 59, at 7.
- <sup>104</sup> SPD 5.140, *supra* note 54.
- <sup>105</sup> Civil Rights Div., Dep't of Justice, Title VI Legal Manual Section VII Proving Discrimination – Disparate Impact 14, <https://www.justice.gov/crt/case-document/file/934826/download> (last visited Feb. 11, 2019); see, e.g., *U.S. v. Maricopa Cty.*, 915 F. Supp. 2d 1073, 1079 (D. Ariz. 2012) (finding disparate impact where the agency's lack of language access policies and training resulted in a denial of access of services).
- <sup>106</sup> SPD 5.140, *supra* note 55; Consent Decree, *United States v. City of Newark*, No. 2:16-cv-01731 -MCA-MAH, ¶ 19-20 (D. NJ Apr. 29, 2016) [hereinafter Newark Consent Decree], <https://www.justice.gov/opa/file/836901/download>.
- <sup>107</sup> SPD 5.140, *supra* note 54.
- <sup>108</sup> U.S. Dep't of Just., Civil Rights Div., Investigation of the Baltimore City Police Department 56 (Aug. 10, 2016), <https://www.justice.gov/crt/file/883296/download>.
- <sup>109</sup> Consent Decree, *United States v. Police Dep't of Baltimore City*, No. 1:17-CV-00099-JKB, ¶ 61 (D. Md. Jan. 12, 2017), [http://www.mdd.uscourts.gov/sites/mdd/files/ConsentDecree\\_1.pdf](http://www.mdd.uscourts.gov/sites/mdd/files/ConsentDecree_1.pdf).
- <sup>110</sup> Newark Consent Decree, *supra* note 106, at ¶ 37-38.
- <sup>111</sup> Elizabeth Dias et. al., Philadelphia Starbucks Arrests, Outrageous to Some, Are Everyday Life for Others, *N.Y. Times* (Apr. 17, 2018), <https://www.nytimes.com/2018/04/17/us/starbucks-arrest-philadelphia.html>; Benjamin Fearnow, White Woman Calls Police on Black Family's BBQ for 'Trespassing' in Oakland Park, *Newsweek* (May 10, 2018), <https://www.newsweek.com/lake-merritt-bbq-barbecue-video-oakland-racist-charcoal-east-bay-black-family-919355>; Christina Caron, A Black Yale Student Was Napping, and a White Student Called the Police, *N.Y. Times* (May 9, 2018), <https://www.nytimes.com/2018/05/09/nyregion/yale-black-student-nap.html>.
- <sup>112</sup> Baltimore Draft Policy 317, *supra* note 59, at 6.
- <sup>113</sup> FBI: Spike in US Hate Crimes for Third Year in a Row, *BBC* (Nov. 13, 2018), <https://www.bbc.com/news/world-us-canada-46189391>. Compare FBI, 2016 Hate Crime Statistics (last visited Feb. 12, 2019) (reporting 6,121 hate crime incidents) with FBI, 2017 Hate Crime Statistics, <https://ucr.fbi.gov/hate-crime/2016/topic-pages/incidentsandoffenses> (last visited Feb. 12, 2019) (reporting 7,175 hate crime incidents), <https://ucr.fbi.gov/hate-crime/2017/topic-pages/incidents-and-offenses>.
- <sup>114</sup> New Orleans Police Dep't, Operations Manual Chapter 42.12 Hate Crimes 4 (eff. May 7, 2017), [https://www.nola.gov/getattachment/NOPD/Policies/Chapter-42-12-Hate-Crimes-EFFECTIVE-5-7-17-\(1\).pdf](https://www.nola.gov/getattachment/NOPD/Policies/Chapter-42-12-Hate-Crimes-EFFECTIVE-5-7-17-(1).pdf).



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<sup>115</sup> See e.g., *id.* (“Mak[e] an affirmative effort to establish contact with persons and groups within the community who are likely targets of hate crimes in order to form, and cooperate with, prevention and response networks ... provid[e] victim assistance and follow-up, including community-based follow-up[.]”).

<sup>116</sup> See *id.*

<sup>117</sup> Three states currently have laws requiring demographic data collection for all stops: California (Cal. Gov’t Code § 12525.5), Illinois (625 Ill. Comp. Stat. Ann. 5/11-212), and Oregon (2017 OR H.B. 2355 (NS)). At least 15 states have statutes requiring data collection for certain vehicle stops: Alabama (Ala. Code § 32-5-222(i)), Connecticut (Conn. Gen. Stat. Ann. § 54-1m), Florida (Fla. Stat. Ann. § 316.614), Louisiana (La. Stat. Ann. § 32:398.10), Maryland (Md. Code Ann., Transp. § 25-113), Missouri (Mo. Ann. Stat. § 590.650), Montana (Mont. Code Ann. § 44-2-117), Nebraska (Neb. Rev. Stat. Ann. § 20-504), North Carolina (N.C. Gen. Stat. Ann. § 143B-903), Rhode Island (R.I. Gen. Laws Ann. § 31-21.1), South Carolina (S.C. Code Ann. § 56-5-6560), Texas (Tex. Code Crim. Proc. Ann. art. 2.133), Vermont (Vt. Stat. Ann. tit. 20, §2366), Washington (Wash. Rev. Code Ann. §§ 43.101.410), West Virginia (W. Va. Code Ann. §§ 17G-1-2).

<sup>118</sup> See Newark Consent Decree, *supra* note 106, at ¶ 52.

<sup>119</sup> Baltimore Draft Policy 317, *supra* note 59, at 5.

<sup>120</sup> See Newark Consent Decree, *supra* note 106, at ¶ 52.

<sup>121</sup> New Orleans 41.13, *supra* note 57, at 5-6.

<sup>122</sup> New Orleans 41.13, *supra* note 59, at 5-6.

<sup>123</sup> See, e.g., Baltimore Draft Policy 317, *supra* note 59, at 8.

<sup>124</sup> President’s Task Force Report, *supra* note 80, at 10 (citing Lorraine Mazerolle, et al., Legitimacy in Policing: A Systematic Review, *The Campbell Collection Library of Systematic Reviews* 9 (Oslo, Norway: The Campbell Collaboration, 2013); Maarten Van Craen & Wesley G. Skogan, Achieving Fairness in Policing: The Link Between Internal and External Procedural Justice, *20(1) Police Quarterly* 3, 6 (2017) (“[T]he extent to which police officers’ behavior toward citizens is guided by the principles of neutrality, respect, voice, and accountability depends on the extent to which supervisors’ behavior toward their officers is characterized by these principles.”), available at <http://journals.sagepub.com/doi/pdf/10.1177/1098611116657818>).

<sup>125</sup> Malcolm D. Holmes & Brad W. Smith, Race and Police Brutality: Roots of an Urban Dilemma 140-41 (2008) (arguing that without broader social change, changing police culture may be impossible).

<sup>126</sup> See Michael R. Smith & Geoffrey P. Alpert, Explaining Police Bias: A Theory of Social Conditioning and Illusory Correlation 34 *Crim. Just. & Behavior* 1262, 1264-66 (2007), [https://www.researchgate.net/publication/242202149\\_Explaining\\_Police\\_Bias](https://www.researchgate.net/publication/242202149_Explaining_Police_Bias).







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