

PREFACE

Our cities cannot advance for some and not for all. Since the killing of George Floyd by Minneapolis police in 2020, U.S. cities have engaged in a long-overdue reckoning about the systemic racism and inequality that have left many Black Americans behind. Indianapolis is no exception.

Indianapolis has begun searching inward to understand the Black lived experience in our City and outward to define the policies and actions necessary to achieve racial equality and justice. We are at the start of a long road; the journey will not be easy or swift. But we are determined and optimistic.

The Greater Indianapolis Progress Committee convenes representatives of all sectors of the community to address the most significant issues of concern and areas of opportunity related to the progress of Indianapolis. The circumstances surrounding the death of George Floyd and our grim awakening to the hardship over many years experienced by Black people who encounter our criminal justice system made clear that police reform is one such significant issue of concern and opportunity for GIPC.

In the summer of 2020, GIPC convened a Structural Reform Team to research, benchmark, and make recommendations of the most critical municipal and police reforms. The Structural Reform Team has now completed its work, compiling recommendations in a paper entitled “Police Reform: Equal Treatment of Black Americans,” released by GIPC today.

The recommendations of the Structural Reform Team are just a starting point to the essential, and, we acknowledge, controversial conversations surrounding community policing in Indianapolis. We must confront and debate with respect provocative and challenging issues such as police reform if we are to achieve an equitable and just City.

GIPC cannot overstate our respect and thanks for the many brave and dedicated police officers who protect and contribute to our community every day. The Structural Reform Team consulted many resources and people, including members of the policing community, before arriving at these recommendations. The Team sought to understand different perspectives, including the complex decisions police officers must make in dangerous circumstances almost daily. These viewpoints were balanced with those of Black citizens and many other voices in this important debate before arriving at the Team’s recommendations.

Police reform is but one of many areas of focus necessary for Indianapolis to be an inclusive, equitable, and just community for all and, therefore, to achieve progress. We applaud the many leaders, advocates, allies, and organizations working on an array of issues to advance racial equity.

As a not-for-profit organization, the Greater Indianapolis Progress Committee issues these recommendations with the understanding that others will carry this work forward to effectuate meaningful change. We look forward to the dialog we hope these recommendations will inspire and the meaningful change and reform leading to justice and equity for Black residents of Indianapolis. It is only with open minds, truly listening, and bold action that Indianapolis will make progress for all.

GIPC would like to thank the Structural Reform Team, chaired by Dean Karen Bravo of the Indiana University Robert H. McKinney School of Law and led by John Gaidoo, Assistant General Counsel of Cummins Inc., and Joe Smith, partner of Faegre Drinker Biddle & Reath, with the contributions of Laurel Judkins, Dinesh Castellino, Danielle Tucker, and Scott Beier of Cummins and students from the I.U. McKinney School of Law.

The Greater Indianapolis Progress Committee
Mary Titsworth Chandler, Chair

Police Reform

Equal Treatment of Black Americans

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I. EXECUTIVE SUMMARY

In June 2020, the Greater Indianapolis Progress Committee announced an initiative to combat racism and bias in Indianapolis, forming the Legal Process Working Group comprised of teams assigned to examine structural police reform and pro bono legal services.

The Structural Reform Team (“SRT”), co-chaired by John Gaidoo of Cummins Inc. and Joe Smith of Faegre Drinker Biddle & Reath, conducted research on a broad range of issues related to policing practices. In partnership with law students from IU McKinney School of Law, a team of Cummins lawyers investigated policing practices, funding sources for law enforcement agencies, governance of police departments and best practices in policing within the United States.

From this research, the SRT identified principles central to comprehensive reform efforts and best practices for policing policy, primarily focused on the equitable treatment of Black individuals in Indianapolis. Described in more detail below, these central principles include accountability, transparency, community policing, national policing standards and strategic fund allocation.

The SRT subsequently ranked and identified the following key initiatives and recommendations supporting the central principles, which are listed here and described in more detail throughout this white paper:

- Increase civilian oversight
- Increase public access to records, proceedings and misconduct investigations
- Improve police training and certification
- Enhance community policing
- Increase police force diversity
- Establish duty to report and intervene
- Revise use of force protocols
- Support strategic fund allocation
- Examine probable cause issues
- Consider ending qualified immunity

This white paper will provide detailed information on the SRT’s approach to this research and ultimate recommendations to effect police reform in Indianapolis.

II. BACKGROUND AND RESEARCH METHODOLOGY

A. Background

There is a history of systemic racism and inequality in the United States. It is well-known that for generations our government created, codified, and supported the institutionalization of racism against Blacks. One way in which this systemic assault on Black people has been perpetuated is through unjust and inequitable treatment of Black people by police. From pre-Civil War slave patrols to violent clashes with civil rights advocates in the 1950's and 60's, to the countless instances of known and unknown police brutality that occurred before George Floyd's murder in May 2020, Black people have been keenly aware of the societal acceptance of and/or indifference to police discrimination and violence.

George Floyd's murder on May 25, 2020 was an inflection point. Video footage surfaced of a police officer crushing Mr. Floyd's head to the ground with a knee on his neck and one hand in his pocket while Mr. Floyd and civilian bystanders begged in vain for his life. The incident has awoken many people who were previously unaware or to a large degree indifferent to the reality of police brutality. Public reaction has been multi-generational, multi-racial, and global, and police reform has become the fulcrum around which a newly energized, broad-based Black civil rights movement is taking shape.

In June 2020, GIPC announced an initiative to combat racism and bias in Indianapolis. GIPC established the SRT in furtherance of that effort. The SRT is tasked with researching police reform and drafting this paper, which outlines policy recommendations and best practices in policing, with a focus on the just and equitable treatment of Black residents in Indianapolis.

B. Research Methodology

The first step in advancing this work was to gain an understanding of the police reform landscape. The SRT accomplished this through soliciting voices from the Indianapolis community concerning reform opportunities and conducting comprehensive research across several topical areas in which the national police reform discussion is occurring. The SRT has identified five Reform Principles, which are listed and defined in **Section III**. The SRT also considered specific reform initiatives identified during our research and conducted a ranking exercise to determine which ones most directly and significantly support the Reform Principles and thus should be prioritized by GIPC. A discussion of specific reform initiatives and proposals as to how GIPC should prioritize them is in **Section IV**.

III. REFORM PRINCIPLES AND DEFINITIONS

The SRT proposes that GIPC recognize the following Reform Principles as indispensable underpinnings of good policing.

A. **Accountability**

Police should be accountable to the community they serve and to each other in the execution of their duties.

B. **Transparency**

Policing should be conducted in a manner that is appropriately public, open, and honest and that generates trust between the police and the community.

C. **Community Policing**

Police should proactively engage and partner with members of the community to identify and solve public safety issues for all residents.

D. **National Policing Standards**

Police should be required to meet agreed-upon national minimum competency standards rooted in consensus of national best practices.

E. **Strategic Fund Allocation**

Police funding should be allocated in a manner that aligns with specific defined strategic goals that maximize public safety.

IV. POLICE REFORM INITIATIVES

The SRT is proposing several specific reform initiatives for GIPC's consideration. "Critical Initiatives" are most impactful because they are significantly influential in supporting all five Reform Principles. "Highly Important Initiatives" are significantly influential in supporting several (*i.e.*, more than two but less than five) Reform Principles. "Important Initiatives" are significantly influential in supporting two or fewer Reform Principles. Specific proposals, grouped by criticality, are explained below.

A. **Critical Initiatives**

1. **Increase Civilian Oversight**

GIPC should continue to support the City-County-Council's effort to establish majority civilian representation on the General Orders Committee ("GOC"). Civilian oversight plays an important role in enhancing accountability and transparency in policing and in building community trust. The GOC is responsible for approving the guidelines and procedures that dictate how IMPD officers perform their jobs. Historically, the GOC consisted of two members appointed by the IMPD chief and one by the Fraternal Order of Police ("FOP"). GIPC and several other Indianapolis non-profit organizations and businesses supported the City-County Council's recent passage of Proposal 237, which changed the make-up of the GOC to two members

appointed by the Chief of Police, one member elected from a majority of active department members and four civilians, two of which will be appointed by the Mayor, and two of which will be appointed by the City-County Council President. It is the first time ever that the GOC will have majority civilian representation.

The Indiana State Legislature is attempting to enact legislation that will abolish majority civilian representation on the GOC, and transfer oversight of the Indianapolis Metropolitan Police Department to an unelected state-appointed board. (Senate Bill 168). GIPC should explore opportunities to resist this effort as a means of preserving this important new opportunity for increased civilian oversight of the IMPD, and to support continuing local control over law enforcement.

GIPC should advocate in favor of maintaining majority civilian membership on the newly created Use-of-Force Review Board (“UFRB”). The IMPD began developing plans to establish the UFRB three years ago in response to concerns over police discipline happening behind closed doors with little to no civilian involvement. In May 2020, Mayor Joe Hogsett and IMPD Chief Randal Taylor announced the establishment of the UFRB, which will be responsible for reviewing every officer’s use of force and determining if the officer followed department training and policy. Recently, the IMPD announced that the new Use of Force Review Board would be made up of five civilian members, a majority on the nine-person UFRB. (<https://www.indystar.com/story/news/local/marion-county/2020/10/30/impd-use-force-review-board-has-more-civilians-than-officers/6089321002/>). GIPC should advocate in favor of maintaining majority civilian membership on the UFRB to the extent it becomes subject to criticism or attack by other parties, including the state legislature.

2. Increase Public Access to Records, Proceedings, and Misconduct Investigations

GIPC should encourage IMPD to establish open disciplinary proceedings, improve and enhance the OpenIndy IMPD Complaint Database, and support a National Police Misconduct Registry. Transparency within the operations of IMPD is paramount to reform efforts and ensuring public confidence, particularly as it relates to investigations of police misconduct. The City of Indianapolis and the IMPD, through contract provisions and local policies, should remove all unnecessary barriers to transparent misconduct investigations and disciplinary proceedings. For example, absent a compelling reason directly rooted in a public safety concern, all parties to a matter should receive the same information at the same time during an investigation. Practices of providing information to officers that civilians do not receive before an interrogation into police misconduct begins should be ended. Information regarding the disposition of these investigations and disciplinary proceedings should be made public and accessible, regardless of whether the complaint was initiated by a member of the public or through an internal IMPD complaint. The Department should also restructure the OpenIndy IMPD Complaint database to include details of each incident, and the status and outcome of each investigation. This database should be made more user-friendly so that citizens can easily navigate and locate information regarding specific incidents and officers. Furthermore, all records should be archived and not destroyed. Finally, this information should be broadly

available through a National Police Misconduct Registry as set forth in the George Floyd Justice in Policing Act. H.R. 7120; 116th Congress (2019-2020)

Improvements to the IMPD Complaint Database would require action at the local level, while the establishment of a National Police Misconduct Registry would require federal involvement and national legislation.

B. Highly Important Initiatives

1. Improve Police Training and Certification

GIPC should advocate for IMPD's implementation of an annual officer continuing education program rooted in the latest national best practices and focusing on officer safety and wellbeing, fair and impartial policing, problem solving, and community partnership and collaboration.

Police effectiveness and trust begin with adequate training. Continuous learning and development are essential to help police officers deal with the expansion in the scope of law enforcement and constantly changing policies and practices. A robust annual continuing education program would help drive continuous improvement and ensure organization-wide acceptance and compliance with policies and best practices.

Annual continuing education training should continue to be strengthened in such topics as:

- Implicit and unconscious bias and similar D and I training
- Impartial policing (see program initiative for Chicago, IL <https://home.chicagopolice.org/reform/sections/impartial-policing/>)
- Crisis intervention training (see program initiative for Miami-Dade <https://namiami.org/crisis-intervention-training/>)
- De-escalation tactics National De-escalation Training Center is at Wayne State University Police Department, Detroit, MI (<https://police.wayne.edu/ndtc>)
- Alternatives to use of force
- Interacting with different populations
- Addressing mental health concerns and crisis situations
- Engaging community resources for support and intervention
- Officer wellbeing
- Other core principles: problem solving, procedural justice, ethical decision making, fair and impartial policing. (<https://www.mass.gov/service-details/mptc-full-time-police-academies>)

2. Enhance Community Policing

GIPC should advocate for IMPD to refresh its approach to community policing to reflect

concepts, policies, and practices that have been effective in other cities. Community policing is a philosophy that promotes organizational strategies that support the systemic use of partnerships and problem-solving techniques to proactively address the conditions that give rise to public safety issues such as crime, social disorder, and fear of crime. (*Community Policing Defined - COPS OFFICE. cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf.*) While IMPD adopts the community policing philosophy, there are several opportunities to revise its execution of policing to foster greater connection and collaboration with the community.

Examples are:

- Enhanced training on the concept of “Guardian versus Warrior Philosophy;” community policing based on trust where officers (a) treat people with dignity and respect (b) allow people to speak and have a voice (c) are neutral and transparent in decision making and (d) display trustworthy motives as proposed by the Minnesota Advisory Committee to the US Commission on Civil Rights, March 2018 (<https://www.usccr.gov/pubs/2018/03-22-MN-Civil-Rights.pdf>)
- Focus on no-harm and de-escalation tactics.

For further discussion and examples of good community policing practices see “What Works in Community Policing” *“What Works in Community Policing - Berkeley Law.”* What Is Community Policing, Chief Justice Earl Warren Institute on Law and Social Policy, www.law.berkeley.edu/files/What_Works_in_Community_Policing.pdf.

3. Increase Police Force Diversity

GIPC should advocate for IMPD’s adoption of mandatory residency requirements and other similar measures to increase the proportion of officers living in the communities they are serving and simultaneously enhance diversity efforts. The IMPD maintains an equal opportunity hiring policy. Its goal should ultimately be to recruit a police force that reflects the demographic make-up of the communities its officers serve. One way to achieve this goal is for IMPD to develop a comprehensive recruiting plan with a strong diversity focus that ensures residency requirements and other proven, effective measures are incorporated. This will ensure that police officers have good understanding, insight, and perspective concerning the communities in which they work and should lead to improvement of the overall relationship between IMPD and the community. (See, e.g., Morison, Kevin P., *Hiring for the 21st Century Law Enforcement Officer: Challenges, Opportunities, and Strategies for Success*. Washington, D.C. 2017. U.S. Dep’t of Justice, Office of Community Oriented Policing Services. Accessed August 28, 2020 at <https://cops.usdoj.gov/RIC/Publications/cops-w0831-pub.pdf>)

4. Establish Robust Duty to Report/Intervene

GIPC should advocate for a revision of the IMPD General Orders to include, among other things, specific guidelines on how an officer should go about intervening and reporting instances of police misconduct and that expressly lists protections for officers who do so. Currently, the General Orders mention a duty to intervene and report but do not contain such

instructions and protections. All the following items should be specifically addressed:

- Clarify when intervention and reporting are mandatory versus discretionary
- Describe procedures for intervening or reporting
- Describe protections for officers who intervene
- Describe the review process for interventions
- Describe reporting, intervention, and post-reporting and intervention documentation requirements. For an example of legislation that has been proposed to address the duty to intervene and associated intervenor protections, see “Cariol's Law.” *Cariol's Law*, www.cariol'slaw.com.

5. Revise Use of Force Protocols

GIPC should support implementation of use of force protocols that prioritize de-escalation and non-escalation measures (verbal engagement, tactical repositioning, slowing down the interaction, etc.) as top priorities and emphasize that use of force should be a last resort.

IMPD's use of force protocols are inadequate to ensure the proper and safest possible use of force when required. IMPD recently updated its General Order 1.30, Use of Force - Principles, and its General Order 1.32, Less Lethal Devices, governing use of chemical sprays and tasers, both effective August 3, 2020.¹ The General Orders broadly outline parameters for use of force, with a specific directive that its use be “objectively reasonable and proportionate to the circumstances,” and it eliminated the use of chokeholds. There are no statements strictly prohibiting use of force under specific circumstances or requiring exhaustion of non-force tactics, such as de-escalation and non-escalation, prior to turning to use of force. See, e.g., [Seattle Police Department Policy](#), which provides a good example of a policy that requires officers to use de-escalation tactics in order to reduce the need for using force. See also the Philadelphia Police Department's directive relating to use of force, specifically defining a use of force continuum and when escalation is appropriate. (See [Philadelphia Police Department Policy](#).)

C. Other Important Initiatives

1. Strategic Fund Allocation

GIPC should consider advocating for the establishment of a strategic funding committee that is responsible for assessing and recommending which agencies or departments are in the best position to carry out community services and any related allocation or reallocation of necessary funding. Recent scrutiny of police department practices has resulted in increased focus on how local law enforcement agencies are allocating funds. There has been discussion of ending a trend of increasing the number of police officers in response to increasing crime rates.

¹ The updated Orders' lawful implementation remains an open question due to Indiana Law Enforcement Training Board's current lack of approval and challenge to the updates. See <https://www.wrtv.com/news/local-news/crime/indianapolis-metro-police-department-training-reforms-being-questioned>

As an alternative, IMPD may consider investment in social programs and other preventative measures that can address root causes of criminal behavior and decrease the need for officer intervention. Examples of programs in which IMPD may consider increasing investment are the InPACT/Re-Entry Program in which Indianapolis Parole and Accountability Team detectives work with Indiana Department of Corrections (IDOC) parole agents to coach, monitor, and facilitate available resources to previous high-risk offenders. [IMPD 2018 Annual Report, p.19.] Another program, the Behavioral Health Unit, is a collaboration between IMPD and Eskenazi Midtown Mental Health Center. This program targets individuals who could be best served by mental health professionals as opposed to police intervention. [IMPD 2018 Annual Report, p. 19.] Both are examples of opportunities to more strategically allocate police funding.

2. Probable Cause Issues

GIPC should advocate for IMPD to require officers to issue paperwork to any citizen who is stopped and frisked and is not arrested and require the documentation to be maintained by the department for periodic review. The use of stop and frisk has been associated with Fourth Amendment violations. Moreover, studies have shown that they do not effectively reduce crime in communities where used, and the use of stop and frisk in multiple cities has been applied in a discriminatory manner resulting in an erosion of community trust. Maintaining a record of these encounters will increase transparency and accountability. For an analysis of stop and frisk use and its effectiveness, see La Vigne, Nancy G., Pamela Lachman, Shebani Rao, and Andrea Matthews. *Stop and Frisk: Balancing Crime Control with Community Relations*. Washington, D.C. 2014. U.S. Dep't of Justice, Office of Community Oriented Policing Services. Accessed Oct. 11, 2020 at <https://www.urban.org/sites/default/files/publication/33661/413258-Stop-and-Frisk-Balancing-Crime-Control-with-Community-Relations.PDF>.

3. Consider Ending Qualified Immunity

GIPC should consider supporting efforts to eliminate the qualified immunity doctrine. Qualified immunity is a doctrine that allows government officials to perform their discretionary functions without fear of liability for civil damages. Officials lose this immunity only if their conduct is found to violate “clearly established statutory or constitutional rights of which a reasonable person would have known.” This standard, in practice, has proved to be exceedingly difficult to meet and makes it difficult for courts to bring officers to trial for their actions. Officers who have engaged in misconduct should be held accountable, and citizens who have suffered harm should not be prevented from seeking a remedy.

There exist both state and federal interpretations of the qualified immunity doctrine. Because the doctrine arose within the courts, either the courts, federal and state, or Congress, at the federal level, and the state legislature, at the state level, could modify or abolish the doctrine.

At the federal level, the Ending Qualified Immunity Act and the Reforming Qualified Immunity Act were introduced in June 2020, the former to eliminate the defense and the latter, proposed by Senator Mike Braun, to alter the definition of when civil liability would attach to law

enforcement actions. Other federal reform efforts target criminal liability for law enforcement actions that violate civil rights. Two such proposals include the Police Accountability Act of 2020 and the Eric Garner Excessive Use of Force Prevention Act of 2019. For more information, see Congressional Research Service, Legal Side Bar, Congress and Police Reform: Current Law and Recent Proposals, updated June 25, 2020 available at <https://crsreports.congress.gov/product/pdf/LSB/LSB10486>.

There have been no legislative proposals put forward at the state level in Indiana, though in other states, efforts have been underway: the Colorado legislature recently passed a law reforming state-level qualified immunity. The law specifies that “qualified immunity is not a defense to liability.” See <https://www.forbes.com/sites/nicksibilla/2020/06/21/colorado-passes-landmark-law-against-qualified-immunity-creates-new-way-to-protect-civil-rights/?sh=493d853d378a>. Similar efforts are underway in Massachusetts. See <https://www.wgbh.org/news/local-news/2020/09/23/massachusetts-aclu-launches-initiative-highlighting-police-violence-and-misconduct-in-the-state>

V. CONCLUSION

While the necessary elements of police reform are vast, the SRT believes these recommendations are the most impactful to improving our community, and the relationship between law enforcement and Black residents. The Structural Reform Team is grateful for the opportunity to provide input into this most important effort and is available to answer follow up questions from GIPC members and join in additional efforts to address police reform in Indianapolis.