

Summary

This memo describes the proposed methodology by which the Pasadena Community Police Oversight Commission (CPOC), with the assistance of the Independent Police Auditor (IPA), intends to formally discuss and consider the pros and cons of the Pasadena Police Department's (PPD) use of pretext stops.

Creating parameters and guidelines for the conduct of PPD traffic stops is particularly important as the PPD works to ensure community trust and perceptions of legitimacy amongst all members of the community.

Background

OIR Group Report - Pretext Stops

On the evening of August 15, 2020, Anthony McClain was shot and killed by a PPD officer as the result of a pretextual traffic stop for an equipment violation. The OIR Group was hired by the City of Pasadena to conduct a thorough review of the shooting and the Department's investigation and administrative review of the incident overall.

The OIR Group issued its report in April 2023 and included amongst its recommendations, the following:

RECOMMENDATION 20

The Community Police Oversight Commission should convene community conversations to formally discuss and consider the pros and cons of PPD's use of pretext stops, especially with regard to minor equipment violations.

In its report the OIR Group reported as follows:

The [PPD] discussed and its [Use of Force Review Board] memo addressed two critical points in the incident: the traffic stop itself and the way Officers 1 and 2 engaged with the driver and subject. The [Use of Force Review] Board determined that: 1) the traffic stop was legal and justified and 2) the officers' tactics for removing the occupants from the vehicle compromised officer safety.

While the Board offered training suggestions to increase officer safety, they did not critically examine these two specific practices themselves to determine if the practices, while legal, are aligned with present-day expectations of policing and the Department's mission.

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Regarding the traffic stop: according to the Board memo and the officers' administrative interviews, the officers stopped the vehicle for failure to display a front license plate, which the Board determined was a lawful reason for the stop. Both the officers and Board articulated additional "facts" surrounding this traffic stop: the officers were on directed "extra patrol" in La Pintoresca Park because of complaints of gang activity and they had recovered three handguns from traffic stops in the recent past. The memo went on to explain that the area had increased crime rates and that the Department had recovered several firearms from the area.

While the officers were legally justified in conducting the traffic stop, the inclusion of these additional "facts," seemingly provided as additional rationale for the stop, went far beyond the vehicle code violation and suggested that the officers were engaged in a "pretext stop." California's Racial and Identity Profiling Advisory Board (RIPA) defines a pretext stop as "when an officer stops a person ostensibly for a traffic violation or minor infraction but with the intention of using the stop to investigate based on an officer's hunch that by itself would not amount to reasonable suspicion or probable cause."¹

As applied to this case, the officers used the pretense of making a (legal) traffic stop to investigate gang affiliation or to recover firearms, as they had been directed by their Department.

In its discussion, Board participants acknowledged that this specific traffic stop was a pretext stop, and the type of proactive policing supported by PPD generally because, they stated, these stops are effective. Board members shared that they had been directed by City leadership to reduce crime rates and gang activity, and that pretext stops yielded the desired results.

The issue with these stops is that because officers are given significant discretion in who they stop and for what reasons, pretext stops can result in disparate or selective enforcement, especially for communities of people of color. These communities have long held (and studies have found) that they are disproportionately stopped for minor traffic equipment violations, such as occurred in this case.

¹ 2023 Annual Report, RIPA Advisory Board, at <https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>

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As this incident and others throughout the nation have shown, the cost of pretext stops, including the potential for deadly harm,² may outweigh any potential benefits. While the use of pretext stops have undoubtedly resulted in recovery of firearms and other contraband, the question is whether that benefit is worth the detentions and other negative consequences that result from such an enforcement strategy.

Some studies have found that the public safety benefits, when measured, are negligible at best; contraband recovery rates are often low³ as is any measurable crime reduction.⁴ The discrepancy between costs and benefits was found to be so large that, in their 2023 Annual Report, the RIPA Board called for “policymakers and law enforcement and municipal leaders to consider ways to eliminate pretextual stops and therefore reduce any potential for harm stemming from such stops.”

Departments have recently reconsidered the use of pretext stops and significantly limited or restricted their use. In March 2022, the Los Angeles Police Department updated its policy to require that officers articulate the rationale for escalating a traffic or other minor violation into a criminal investigation on their body-worn camera.⁵ A November 2022 Los Angeles Times study found that, in very short order, this policy change resulted in far fewer pretext stops with a higher contraband recovery rate as officers became more intentional in their stops and searches.⁶ Similarly, in January 2023, the San Francisco Police Department issued a policy that limits officers from

² For a discussion of the costs associated with pretext stops, see the Public Policy Institute of California 2022 study by Lofstrom et al., “Racial Disparities in Traffic Stops.”

³ PPD cited anecdotal evidence that the stops “work:” in his administrative statement, Officer Dumaguindin stated that he and Officer Mulrooney had previously recovered three handguns – two during traffic stops -- from the area that they were patrolling the evening of the incident.

⁴ See studies as cited by the 2023 RIPA Annual Report, including Westervelt, “Cities Looking To Reform Police Traffic Stops to Combat ‘Fishing Expeditions’” (2022); Miller et al., “Public Opinions of the Police: The Influence of Friends, Family and News Media” (2018); and Blanks, “Thin Blue Lies: How Pretextual Stops Undermine Police Legitimacy” (2016).

⁵ See LAPD Special Order 3: Limitation on the Use of Pretextual Stops, issued March 9, 2022. See also LAPD’s March 2022 “Chief’s Message” regarding this topic at: <https://www.youtube.com/watch?v=sb9SEJvIDcM>

⁶ See: <https://www.latimes.com/california/story/2022-11-14/minor-traffic-stopsplummet-in-months-after-lapd-policy-change>

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conducting traffic stops for nine low-level equipment and driving violations, including broken brake lights or failure to activate a turn signal.⁷

Other departments are actively working with researchers and their community to determine the most effective policing methods related to traffic stops. For example, after researchers identified racial disparities in stops and searches coupled with an extremely low contraband recovery rate, the New Haven (Connecticut) police department consulted with community members for solutions. Together, they reformed traffic enforcement policies to focus only on hazardous driving instead of low-level equipment violations and prohibited consent searches. These changes resulted in lower rates of traffic accidents and a 63% increase in recovery of contraband from searches.

We recommend that Pasadena examine pretext stops; the Community Police Oversight Commission should convene community conversations to formally discuss and review PPD's use of pretext stops.

Proposed Methodology:

It is recommended that the CPOC collaborate with a variety of stakeholders and subject matter experts to help identify the pros and cons of the PPD's current use of pretextual stops and provide feedback to the PPD and the City of Pasadena.

White Paper

To provide a foundation for stakeholder discussions, the IPA will commission a white paper that will summarize the current state of the academic and professional literature on the topic of pretextual stops to be authored by a University Professor to be chosen by the IPA after conferring with the CPOC Pretext Stop ad hoc committee.

Roundtable discussions

CPOC staff, in consultation with the IPA, and the CPOC, shall research and identify a diverse group of potential stakeholders to participate in roundtable discussions relating key issues involving in the use of pretext stops by the police.

Community stakeholders could include representation from local Chapters of the ACLU, NAACP, League of Women Voters, the Innocence Project, and the Los Angeles County Public Defenders Office. In addition, community representation

⁷ See SFPD General Order 9.07: Curtailing the Use of Pretext Stops, issued January 11, 2023.

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could also include members of the business community, victims’ rights groups, and/or victims of gun violence groups and should include organizations dedicated to community service and/or public safety.

CPOC staff, in consultation with the IPA, shall also research and identify potential law enforcement stakeholders which may include representation from the PPD command staff, police union leadership, the Los Angeles County District Attorney’s Office, the Prosecution Division of the Pasadena City Attorney’s Office and the California Commission on Peace Officer Standards and Training (POST).

CPOC staff will subsequently organize roundtable meetings, to include diverse members of the community to be facilitated by CPOC staff, the IPA and/or a professional facilitator. CPOC staff will consult with the IPA and the CPOC Pretext Stop Ad Hoc Subcommittee⁸ in determining the participants in each roundtable meeting.

Roundtable participants will be given the opportunity to review the White paper and a literature library to be compiled by CPOC staff and the IPA and made available on the CPOC website.

Ultimately, representatives of each roundtable group will invited to participate in a final roundtable conversation to assist in the creation of a report providing a balanced account of the opinions expressed during the roundtable meetings.

Public Forums:

Two public forums are to be hosted by the CPOC, in different parts of the city and to be widely advertised by CPOC staff, to solicit public feedback on the topic and to share opinions on the pros and cons of the use of pretext stops by the PPD. Written comments are to be invited to be submitted via a link on the CPOC website.

Surveys

An online survey instrument will be created, as facilitated by the IPA with the use of a qualified consultant, to solicit public feedback via the CPOC website and to subsequently be summarized by CPOC staff. In addition, the Chief will be asked to direct his officers to distribute to all persons subjected to a PPD traffic stop, for a

⁸ Previously referred to in the CPOC’s 2023-2024 Work Plan as “Objective #2 Ad Hoc Subcommittee,” created to “[d]evelop a methodology to analyze the use of pretextual stops in Pasadena and make recommendations to PPD; to include convening community conversations to formally discuss and consider the pros and cons of PPD’s use of pretext stops.”

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later to be determined period, survey cards requesting that those persons participate in the CPOC online survey.

In addition, the PPD Chief will be requested to allow the aforementioned IPA-selected consultant to send out an online survey to all PPD personnel to obtain their perspectives and opinions on PPD's current policies and practices regarding pretext stops.

CPOC staff memo:

Ultimately, CPOC staff, in consultation with the IPA and CPOC Subcommittee #2, will prepare a memo that summarizes the feedback from the aforementioned outreach efforts for consideration by the full CPOC.

PPD feedback:

The IPA and CPOC staff will provide the PPD with the information collected and solicit PPD Command Staff input as to any potential changes to be made to PPD policy or practice.

CPOC Meetings

The White paper, staff memo and any PPD response will be submitted to the full CPOC at its next available meeting for discussion. The CPOC will discuss any policy proposals or alternative policy proposals recommended by the PPD and/or the IPA and Pretext Stop Ad Hoc Subcommittee. The CPOC will make a final recommendation (based on a majority vote) which will be forwarded to the City Manager, the Chief of Police, the Mayor, and the City Council.