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# AGENDA REPORT

**TO:** SABRINA B. LANDRETH  
CITY ADMINISTRATOR

**FROM:** Sean Whent

**SUBJECT:** Informational Report Re: Request of  
100 Black Men of the Bay Area, Inc. –  
Psychological Testing and Screening

**DATE:** June 26, 2015

City Administrator  
Approval

Date

6/30/15

**COUNCIL DISTRICT:** City-Wide

## RECOMMENDATION

Staff recommends that the Public Safety Committee accept:

An Informational Report from the Oakland Police Department (OPD) in response to a Rules request from 100 Black Men of the Bay Area (Frank Tucker) concerning psychological testing and screening of police officers.

## OUTCOME

This report will help facilitate discussion between the Oakland Police Department and the Public Safety Committee regarding a Rules request from 100 Black Men of the Bay Area (Frank Tucker) concerning psychological testing and screening of police officers.

## BACKGROUND / LEGISLATIVE HISTORY

At the April 16, 2015 Rules and Legislation Committee, the Committee approved for scheduling the 100 Black Men of the Bay Area Inc.'s (100 Black Men) request for Council reports. The City Administrator assigned many of the 100 Black Men requests to the Oakland Police Department (OPD) for further response. This report is responsive to the first request, which is to receive an informational report and possible action adopting legislation requiring the use of psychological testing and screening for officer new hires, and the re-testing of all sworn personnel in five year intervals thereafter.

Item: \_\_\_\_\_  
Public Safety Committee  
July 14, 2015

## ANALYSIS

All new OPD hires are required to undergo psychological screening for the position of Police Officer. California Government Code section 1031(f) states that every peace officer needs to be free from any physical, emotional, or mental condition that might adversely affect the exercise of the powers of a peace officer. Concerning psychological screening, California Government Code section 1031(f) provides:

(2) Emotional and mental condition shall be evaluated by either of the following:

(A) A physician and surgeon who holds a valid California license to practice medicine, has successfully completed a postgraduate medical residency education program in psychiatry accredited by the Accreditation Council for Graduate Medical Education, and has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued after completion of the psychiatric residency program.

(B) A psychologist licensed by the California Board of Psychology who has at least the equivalent of five full-time years of experience in the diagnosis and treatment of emotional and mental disorders, including the equivalent of three full-time years accrued postdoctorate.

This state law has been in effect for many years and applies to all peace officer candidates in California – including Oakland. The requirement that all officer new hires are required to undergo psychological screening is provided on the OPD website, in the Selection Process section of the Recruiting page:

<http://www2.oaklandnet.com/Government/o/OPD/s/Recruiting/Information/SelectionProcess/index.htm>.

The proposal from 100 Black Men that all sworn personnel be subject to psychological testing every five years, regardless of cause is currently infeasible. California law provides that a psychological exam of a public employee (a fitness for duty examination) can only be mandated based on identified, related conduct or performance issues. Public employees including police officers, have a right to privacy with respect to their health and medical records under the California Constitution article I, section 1. Once hired, employers may require psychological testing upon showing that the need to obtain this information is legitimately related to the employee's work and consistent with business necessity. Additionally, the City must comply with requirements that may be triggered under the Americans with Disability Act, Fair Labor Standards Act, etc. Federal law, as provided by the Equal Employment Opportunity Commission (EEOC), includes uniform guidelines on the testing of applicants and employees.<sup>1</sup>

<sup>1</sup> Title 29, United States Code of Federal Regulations Part 1607: <http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=29:4.1.4.1.8>

Concerning psychological screening regulations and practices for law enforcement officers in other states, none were identified in which law enforcement agencies require officers to undergo mandatory psychological evaluations absent an identified conduct or performance issue. The International Association of the Chiefs of Police (IACP) underscores this point:

A Psychological Fitness-for-Duty Evaluation Guidelines (FFDE) is a formal, specialized examination of an incumbent employee that results from (1) objective evidence that the employee may be unable to safely or effectively perform a defined job; and (2) a reasonable basis for believing that the cause may be attributable to a psychological condition or impairment. The central purpose of an FFDE is to determine whether the employee is able to safely and effectively perform his or her essential job functions. An FFDE can be triggered by a perceived threat in the workplace or by a reasonable suspicion that the officer has a psychological problem that might affect work performance. For law enforcement personnel, a request for an FFDE typically comes from a police administrator and is compulsory.<sup>2</sup>

In accordance with identified best practices, OPD mandates counseling services for those officers in a force incident that results in a person being seriously injured or killed. Departmental General Order (DGO) K-3 (Use of Force) section V states:

C. Counseling Services

Members involved in a force incident that results in a person being seriously injured or killed shall attend employee assistance and counseling services provided by the City before his/her return to normal duties. Supervisors shall verify attendance only and document completion in a SNF [Supervisory Note File] entry. Command officers shall ensure involved members are advised of the services available and shall direct their attendance. As needed, members and employees who witness such incidents may also be referred to counseling services.

Also in accordance with identified best practices, OPD uses an early warning system to identify those officers engaging in at-risk behavior or substandard performance. This helps identify those officers in need of psychological evaluation and assistance. DGO D-17 Personnel Assessment System (PAS) states that when patterns of at-risk behavior or substandard performance are identified, appropriate strategies must also be identified. Strategies include supervisory mentoring or intervention.

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<sup>2</sup> Fischler, G., et al.; The Role of Psychological Fitness-for-Duty Evaluations in Law Enforcement, *The Police Chief Magazine*, August 2011

DGO D-17 Section VII provides the following concerning intervention strategies:

- A. Intervention strategies may include but are not limited to:
1. Mentoring;
  2. Additional training (individual or Departmental) specifically tailored to the performance requiring intervention;
  3. Peer counseling;
  4. Chaplain referral (voluntary only);
  5. Referral to a professional counselor;
  6. Referral to the Employee Assistance Program (EAP);
  7. Administrative reassignment to other duties;
  8. Administrative transfer (temporary);
  9. Referral for Fitness for Duty evaluation (for physical or psychological performance related issues that cannot be addressed by existing Departmental resources);
  10. Substance abuse rehabilitation;
  11. Require the use of a recording device;
  12. Customer service surveys;
  13. Attendance management;
  14. Consultation with the District Attorney's Office to review courtroom testimony techniques;
  15. Performance Deficiency Notice (PDN).
- B. Since PAS is a non-disciplinary process, intervention may be applied in any circumstance for which it is warranted. The objective of PAS is to either recognize exemplary performance or improve substandard performance in any of the measured performance dimensions.
- C. With the exception of a voluntary chaplain referral, participation in and/or completion of the specified strategy by the referred individual is mandatory.

Voluntary psychological services are available to sworn OPD personnel through an employee assistance program, currently managed by Managed Health Network (MHN). MHN is a licensed California specialized health care service plan that connects or refers members to a professional who can help with marriage, family, and relationship issues; problems in the workplace; stress, anxiety and sadness; mood changes; grief and loss counseling; responses to traumatic events; anger management; domestic violence; and alcohol and drug dependency. MHN also helps with childcare and eldercare assistance, financial services, legal services, identity theft recovery services, and daily living services.

In addition to the services available through MHN, the City of Oakland contracts with a licensed Marriage and Family Therapist to provide counseling services to OPD staff. Dr. Palmertree holds office hours and schedules regular sessions on a weekly basis at the Oakland Police Officers Association building, a short distance of the Oakland Police Administration Building.

Years of experience with OPD personnel has built trust in Dr. Palmertree by OPD staff. There is no charge for this service to members of OPD. Dr. Palmertree also provides crisis incident counseling.

In short, OPD tests everyone for psychological fitness to join the department, monitors officer conduct and performance through its early intervention system, and does everything possible to psychologically support officers within the department especially given the difficult work environment of an Oakland police officer. State and Federal guidelines made to protect all employees prohibit OPD from regularly performing psychological tests on all officers in California and throughout the United States.

### **PUBLIC OUTREACH/INTEREST**

This is of public interest as it directly relates to safety within the Oakland community and was requested by members of the public.

### **COORDINATION**

The Office of the City Attorney was consulted in preparation of this report.

### **COST SUMMARY/IMPLICATIONS**

There are no costs associated with this report.

**SUSTAINABLE OPPORTUNITIES**


***Economic:*** There are no economic opportunities identified in this report.

***Environmental:*** No environmental opportunities have been identified.

***Social Equity:*** This report provides valuable information to the Oakland community regarding social equity through transparent, fair, and impartial policing.

For questions regarding this report, please contact Police Services Manager Timothy Birch, Research and Planning, at (510) 238-6443.

Respectfully submitted,



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Sean Whent  
Chief of Police  
Oakland Police Department

Prepared by:  
Timothy Birch  
Police Services Manager I  
Research and Planning  
Office of the Chief  
Oakland Police Department