



VANCOUVER POLICE BOARD

"PROVIDING INDEPENDENT CIVILIAN OVERSIGHT, GOVERNANCE, AND STRATEGIC LEADERSHIP TO THE VANCOUVER POLICE DEPARTMENT, REFLECTING THE NEEDS, VALUES AND DIVERSITY OF VANCOUVER'S COMMUNITIES."

Meeting Date: February 18, 2021
Report Number: 2102G01
Regular Meeting

TO: The Vancouver Police Board
FROM: Vancouver Police Board Governance Committee
SUBJECT: Annual Audit of Street Check Data, and update to the 34 recommendations from the External Pyxis review

RECOMMENDATIONS:

THAT this report be received for information.

BACKGROUND:

In June of 2018, the Vancouver Police Board (Board) received a service or policy complaint from the Union of BC Indian Chiefs (UBCIC) and the BC Civil Liberties Association (BCCLA), about the overrepresentation of Indigenous and Black people in street check data that had been released through a Freedom of Information request.

In response to this service or policy complaint, the Department (VPD) titled 'Understanding Street Checks' underwent an independent review by Pyxis Consulting Group Inc. The review focused on those affected by street checks. This 18-month review included an assessment of police contacts, a survey of 36 Vancouver community organizations, with a focus on diversity, and with users of their services to identify issues. The final report made 34 recommendations in relation to street checks.

The service or policy complaint was concluded by the Board:

- Implementing the 6 recommendations in the VPD report;
- Approving and implementing a street checks policy consistent with Provincial Standards on Police Stops;
- Accepting the findings of the 18-month external Pyxis review commissioned by the Board;
- Supporting the 34 recommendations outlined in the final Pyxis report; and,
- Committing to ongoing oversight and involvement through the Governance Committee by:
 - Monitoring the annual provincially mandated audit of street checks;
 - Overseeing the annual release of VPD street check data; and,
 - Ensuring action continues to be taken with respect to the 34 recommendations in the Pyxis report.

We have continuously challenged the methodology, credibility and findings of the Pyxis Street Checks Report.

The Pyxis Report - contracted out by the Vancouver Police Board to a consulting company run by a former police officer - did not demonstrate the efficacy or necessity of street checks, which were at the core of the UBCIC and BCCLA complaint.

The censorship of relevant information from the Pyxis Report regarding police racism and misconduct is currently subject to a provincial review. The continued reliance on this flawed report is highly concerning.

The attached report from the VPD is the first annual audit report of VPD street check data, and covers the period from when the Provincial Standards on Police Stops first came into effect on January 15, 2020, to December 31, 2020. The Governance Committee will continue to oversee the annual audit reports, which will be publicly released in February of each year, and will comprise the VPD's street check data for each calendar year moving forward.

SUMMARY

The attached report has been reviewed by the Board's Governance Committee. The report exceeds the requirements of the provincially mandated audit by including a review of **all** submitted street checks (as opposed to a sample selection), and by providing status updates on the 34 recommendations from the external Pyxis review. The report also upholds the Board's commitment to annually releasing street check data that is broken down by gender and ethnicity, and monitors for any street checks that don't comply with the VPD's policy.

The Governance Committee understands that there continues to be ~~some concerns~~ ⁹² ~~over~~ ⁸⁹⁸³ street check practices, as expressed by ~~certain~~ ⁹² groups or individuals. These concerns appear to be based on the assertion that police conduct them randomly, arbitrarily, or based on a bias that results in discriminatory actions. ~~The Committee wishes to underline that random, arbitrary stops are not, and have never been part of the VPD's policy or practice.~~ Both the Provincial Standards, and the VPD policy are clear in that street checks **must** be **voluntary**, articulate a public safety reason, and comply with policy. Street checks

concerns by 92 organizations

and a motion by City Council

Even if someone is theoretically free to leave during a "voluntary" street check, this is impracticable and the person is effectively detained.

in accordance with the Provincial Standards and VPD Policy are **lawful**. Any street check based on or discrimination in conducting street checks is prohibited by the *Police Act*.

decline in street check reporting. In accordance with VPD policy, they may decline to investigate suspicious persons or vehicles lawfully by adhering to the *Police Act*.

Street checks are not lawful. The legal opinion provided by J. Michael MacDonald to the Nova Scotia Human Rights Commission is categorical: "The common law does not empower the police to conduct street checks, because they are not reasonably necessary. They are therefore illegal."

Further, in *R v Le*, the Supreme Court of Canada found an interaction involving a street check constituted arbitrary psychological detention.

The Board deeply values public trust and the relationship with communities of color. The report regarding the **disproportionate** number of street checks on Black and Indigenous people is a significant finding.

It is precisely because there is no lawful authority for street checks that the VPD claims they are "voluntary."

Street checks are still targeting Indigenous and Black people. Police profiling in street checks is part of the root problem of systemic racism in the justice system.

the street check data in terms of how issues of poverty, homelessness, and other social factors are significant factors in interpreting the street check reporting statistics. The report also calls for active and collaborative dialogue with various levels of government to address crime, and address what is at the root of the inherent ethnic statistical disparities in the entirety of the criminal justice system.

The Board is committed to VPD to establish a Black and African Diaspora Advisory Committee (in addition to the existing Indigenous Advisory Committee), and to develop and provide historical awareness and cultural sensitivity training for current and future officers regarding the experiences of Black people in Vancouver and Canada. The Terms of Reference for this Committee have been drafted by the VPD, and reviewed by the Governance Committee, and work in constituting this committee is ongoing. Additional training regarding anti-racism awareness and experiences of different people who have experienced racism in Vancouver is currently being developed with a goal to train the Department in 2021. Content for this training is being developed through consultation with members of the community.

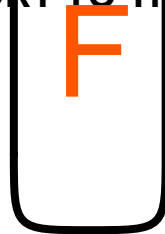
CONCLUSION

The Governance Committee will continue to oversee the annual audit of the VPD's street check data, and the annual releasing of VPD street check data to ensure transparency, and accountability. The attached report from the VPD is being provided to the Board for information through the Governance Committee, as part of its ongoing commitment to oversight and responsiveness to this issue.



VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD



REPORT DATE: January 30, 2021
 BOARD MEETING DATE: February 18, 2021
 BOARD REPORT # 2102G01

Regular

TO: **Vancouver Police Board**
 FROM: Drazen Manojlovic, Director, Planning, Research and Audit Section
 SUBJECT: Street Check Audit Report

RECOMMENDATION:

THAT the Vancouver Police Board (VPB) receive this report for information.

SUMMARY:

In September of 2018, as part of its governance and oversight responsibilities, the VPB committed to auditing street checks and annually releasing street check data that is broken down by gender and ethnicity. On January 15, 2020, British Columbia (BC) Provincial Policing Standard (BCPPS) 6.2.1 *Police Stops* ("Standard") came into effect. The Standard also requires police departments in BC to conduct an annual audit of street check commitments. This report will also provide the results of the audit, comment on the efficacy of the practice of street checks, and recommend whether to ban the practice of street checks.

The provincial standards regulate and normalize the practice of street checks, despite there being no legal basis for street checks to be authorized under common law or statute.

The following is a high-level listing of the audit's findings. Important background, information, and context is in the main body of the report, and must be read to avoid any misinterpretations:

The Law Surrounding Street Checks (pages 6-8)

- In addition to BC, the following provincial governments have either regulated or provided guidance on the practice of street checks: Ontario; Saskatchewan; Nova Scotia; Quebec, and; Alberta (they are listed in chronological order of when each government provided direction).
- Police cannot conduct a street check that is random, arbitrary, biased, or based on identity factors such as (but not limited to) race or ethnicity.
- Police can conduct street checks when they are making enquiries into reasonable and legitimate public safety purposes such as (but not limited to) suspicious activity, crime prevention or intelligence gathering.
- Those who have stated that street checks are illegal, even when they are done free of any bias, are incorrect.

"Those that have stated that street checks are illegal" include the Supreme Court of Canada in R v. Le.

Except that systemic racism in policing is real and currently subject to provincial and federal reviews.

Audit Results (pages 8-12)

- The audit will report on all street check records that were submitted between January 1, 2020 and December 31, 2020.
- There were 261 street check records submitted. The number of street checks decreased by 94.3% when compared to the 4,544 records during the same period in 2019. This is likely due to a combination of the public dialogue on street checks, the constraints placed upon the practice by the Standard, and the COVID-19 pandemic.

Street checks should be further decreased to zero street checks. 261 street checks is still 261 too many.

"Proactive street check" is new language that is not defined in the provincial standards nor the VPD policy manual? As courts have found, the police do not possess a general power to proactively interfere with individual's constitutional rights.

Typical of sweeping changes to any practice, that audit found that 186 of the 261 street check records were misclassified as a street check (IMSC), while the remaining 75 records were an actual 'proactive street check'. The 186 IMSC records include interactions such as (but not limited to) traffic stops, calls for service, violation ticket investigations, and observations of chronic offenders that were never stopped. The VPD has initiated the process of correcting these 186 misclassified records.

A proactive street check record is defined as a record where the officer has articulated a 'public safety' reason for the street check. For the seven street checks that were misclassified as IMSCs, the VPD began the process of contacting the individual to determine if there was a public safety purpose and, if there is not, to remove the information in the record. Follow-up training material was developed and disseminated to mirror the correct classification of records.

If VPD officers are confused about what a street check even is and how to classify it, then why are they authorized to conduct street checks?

The recording of such observations is illegal. The provincial standards and VPD's own policy prohibits officers from collecting or recording a person's identifying information without a justifiable reason, and past criminality is not a justifiable reason nor meets the standard of "real risk of imminent harm" (Brown v Durham)

graphics of People in Street Checks (pages 12-15)

As stated above, 75 of the 261 street check records were proactive street checks, and 186 were IMSCs. More than one person can be part of a street check record, therefore there are more people associated with a record than there are records. In the interest of public transparency, this report includes the ethnic/racial breakdown of the 353 'person entries' associated with all 261 street check records. The numbers in parentheses beside each ethnicity/race listed below represents that group's percentage of Vancouver's population based on the 2016 Census):

All Street Check Records	Total		Female		Male	
	Count	% of Total Entries	Count	% of Total Entries	Count	% of Total Entries
<i>Ethnicity/Race (% of Van's Pop)</i>						
Asian (38.9%)	31	8.8%	8	2.3%	23	6.5%
Black (1.0%)	21	5.9%	3	0.8%	18	5.1%
Caucasian (46.1%)	204	57.8%	37	10.5%	167	47.3%
Hispanic (1.8%)	3	0.8%	1	0.3%	2	0.6%
Indigenous (2.2%)	53	15.0%	14	4.0%	39	11.0%
Middle Eastern (1.9%)	6	1.7%	1	0.3%	5	1.4%
South Asian (6.0%)	24	6.8%	2	0.6%	22	6.2%
Unknown	11	3.1%	6	1.7%	5	1.4%
Total	353	100.0%	72	20.5%	281	79.5%

Street checks are STILL racist and disproportionately targeting Black and Indigenous people!

- The following table shows the ethnic/racial breakdown of the 87 person entries from the 75 proactive street checks:

Appallingly, street checks are still a form of anti-Black and anti-Indigenous racism

Proactive Checks	Ethnicity, (% of Van's Pop)	Count	Percentage	Female		Male	
				Count	Percentage	Count	Percentage
	Asian (38.9%)	7	8.0%	3	3.4%	4	4.6%
	Black (1.0%)	2	2.3%	0	0.0%	2	2.3%
	Caucasian (46.1%)	49	56.3%	8	9.2%	41	47.1%
	Hispanic (1.8%)	1	1.1%	0	0.0%	1	1.1%
	Indigenous (2.2%)	20	23.0%	8	9.2%	12	13.8%
	Middle Eastern (1.9%)	1	1.1%	0	0.0%	1	1.1%
	South Asian (6.0%)	7	8.0%	0	0.0%	7	8.0%
Total		87	100.0%	19	21.8%	68	78.2%

- Note that for Black people there were only two proactive street checks, while 20 of the street checks were of Indigenous people; however, 11 of the street checks of Indigenous people were a check of their well-being or safety. **Police should not be involved in wellness checks.**

Police racial profiling in street checks is a key socio-economic cause of statistical disproportionality

Statistical Disproportionality (pages 15-17)

Just doubling down on justifying racism!

- There is ethnic/racial statistical disproportionality in data across the entire spectrum of the criminal justice system. For example, in 2020, there is ethnic/racial statistical disproportionality amongst victims of violent crime and the suspects of violent crimes.
- Furthermore, also in 2020, when Crown Counsel approved charges against any type of criminal offense, the results also show ethnic/racial statistical disproportionality.
- Why are some ethnic/racial groups over-represented in criminal justice data? The ethnic/racial disproportionality amongst ethnicities/races in the data is symptomatic of historical, socio-economic root causes that Canadian society has to address. The disproportionality should be reduced or eliminated.

Street checks are a pipeline to the criminal justice system.

Clearly limiting police discretion to interfere with racialized individual's liberty and privacy by banning street checks would address some of these root issues.

Suspect Histories of People in the Street Check Records (pages 17-18)

Prior criminality, let alone vague and self-perpetuating notion of 'suspect' history where there is no conviction, is not a legally justifiable reason to stop and question an individual and collect/record their personal information. This practice violates individual liberty and privacy and does not meet the standard of "real risk of imminent harm". (Brown v. Durham). Ideas of vague suspicion are a form of racism in policing and reinforces statistical disproportionality.

People in the 261 records were a suspect in an arrest prior to the record.

People in the 75 proactive street checks were a suspect in criminal investigations prior to the street check.

(8-22)

Proactive practice with value to future investigations. Lawfully a fundamental tool to proactive policing.

because of a concern the officer observes, and the behaviour then becomes

Repeated calls for evidence of this has never been provided by the VPD and is the basis of a policy complaint regarding street checks.

- In 2020, VPD officers came across 3,999 crimes before they were reported ('on-view'), which is an average of 11 on-view crimes per day or one on-view crime every 2 hours and 12 minutes.
- Missing Person Unit investigations, including developing crime files, and determining the locations of those armed and dangerous.
- The following table shows the trend in the Total Crime Severity Index (CSI) in the three years prior to Ontario's street check regulation (year-end 2013 to year-end 2016) and compares it to the three years since the regulation came into effect (year-end 2016 to year-end 2019). Note how all but one of the largest Ontario municipalities worsened in the last three years and the degree of worsening was not insignificant:

This is, by definition, not a street check; this is technically a police investigation or investigative detention.

Total CSI

Largest Ontario Police Services vs. Canada & Vancouver

Geography	Index	2013-2016 % Change	2016-2019 % Change
Canada	CSI	4.5%	10.3%
Ontario	CSI	1.4%	13.9%
Ottawa	CSI	4.9%	12.0%
Peel Region	CSI	2.3%	1.0%
Halton Region	CSI	-2.3%	11.9%
Hamilton	CSI	-1.5%	9.4%
Durham Region	CSI	0.4%	11.1%
Waterloo Region	CSI	5.6%	20.8%
Toronto	CSI	1.1%	14.8%
York Region	CSI	6.0%	29.4%
London	CSI	-0.5%	7.4%
Niagara	CSI	-13.5%	30.5%
Vancouver	CSI	9.6%	-3.3%

The implication that crime has skyrocketed in a jurisdiction that has curbed the illegal and harmful practice of carding is repugnant. Charter rights are not subject to police whim. And there continues to be no evidence that street checks actually reduce crime. Even police officers in others parts of the country have stated that street checks data is "garbage in, garbage out."

Banning Street Checks (pages 22-25)

- Concerns over street check practices are based on the assertion that conducting them randomly, arbitrarily, or without cause results in arbitrary actions. A street check conducted without cause is unlawful.
- The VPD's policy on conducting street checks is unlawful. Section 11 of the policy requires that a street check be conducted only if the person is reasonably seen as suspicious, or if there is a concern for a person's well-being. The Standard and the VPD policy are designed to ensure police are not targeting individuals because they are homeless, marginalized, based on their ethnic background, 'don't belong in this neighbourhood', or many other factors. Done properly, street checks are lawful and police have the legal authority to conduct them because they fall squarely within the scope of police duties recognized in common law generally and Canadian jurisprudence, specifically; to preserve the peace, prevent crime, and protect life and property.

What is "done properly"? All street checks are supposed to be "voluntary" because there is no lawful authority for them otherwise.

Policy design and intent is not the same as lived reality and impact.

In *R v Le*, the Supreme Court of Canada found an interaction involving a street check constituted arbitrary psychological detention.

NO. The legal opinion provided to the Nova Scotia Human Rights Commission concludes: "The common law does not empower the police to conduct street checks, because they are not reasonably necessary. They are therefore illegal."

Unlike Ontario, the legal authority to conduct street checks in BC is not governed by regulation. Furthermore, Tulloch report also found that "there is little to no evidence that a random, unfocused collection of identifying information has benefits that outweigh the social cost of the practice."

- Justice Michael Tulloch, Ontario Court of Appeal Judge, led a review of Ontario's regulation (*Independent Street Checks Review*) stated, "the police are generally free to ask questions of anyone on the street, regardless of whether an offence has been committed. However, the person being questioned does not have to answer and can proceed on their way". These types of stops and subsequent inquiries must not be arbitrary; they must be rooted in an officer's observations of what they reasonably believe is suspicious activity by that person, or used to gather pertinent intelligence about suspicious activity. As Justice Tulloch summarizes, "when a police officer, without bias or discrimination, asks an individual to provide information, and the person voluntarily provides information, then there is no question that the information was properly obtained." The concept of banning lawful street checks encroaches on the police's ability to engage in other types of voluntary interactions, such as police approaching the subject of a complaint that stems from a call for service. Consider that in the other provinces that have developed regulations or guidelines, none of them has banned the practice.

Even if street checks are voluntary and someone is theoretically free to leave during a street check, this is impracticable. Considering the power imbalance between police officers and the public, especially racialized people, a "voluntary" interaction is tantamount to an illegal detention where a person reasonably believes that they are not free to leave.

UNLAWFUL
Reasons of Banning Lawful Street Checks

Police Obligation: Police officers would be hampered to find that interactions with citizens are banned and recognized in common law generally and Canada's peace, prevent crime, and protect life and property.

Limitations to Proactive Policing: Police officers reduce crime by using prevention strategies. This is not possible if voluntary interactions with citizens are prohibited. If an officer observes something suspicious, however they may not investigate suspicious activity (e.g., de-policing).

Citizen Calls for Service/Reputational Risk: Police officers respond to suspicious or potentially criminal behaviour. In 2019, there were 2.5 million calls for service from citizens about suspicious behaviour (approximately 50 calls a day). If banned, police officers would not be able to respond to these calls.

Enquiring about a Person's Well-being or Safety: Police officers respond to 911 calls from citizens who are calling the police because they observe suspicious activity. VPD received several 911 calls from fearful women who felt they were being followed by men. Other common calls from citizens include suspicious individuals looking through car windows, or parents at a park who observe a lone male talking to children.

On-View Arrests: Incidents that begin as a street check, but upon further information, turn into arrests (e.g., police learn, upon voluntarily obtaining ID, that the individual has a warrant out for his/her arrest).

Enquiring about a Person's Well-being or Safety: Police officers respond to 911 calls from citizens who are calling the police because they observe suspicious activity. VPD received several 911 calls from fearful women who felt they were being followed by men. Other common calls from citizens include suspicious individuals looking through car windows, or parents at a park who observe a lone male talking to children.

UNTRUE!

Street checks are NOT lawful. The legal opinion provided to the Nova Scotia Human Rights Commission is clear, "The common law does not empower the police to conduct street checks, because they are not reasonably necessary. They are therefore illegal."

It is precisely because there is no lawful authority to conduct street checks that the VPD policy emphasizes that street checks are "voluntary" interactions.

This is evidence of pre-text policing, which is highly troubling

Police are not ideally positioned to conduct wellness checks. And how are these "voluntary" if police are requesting and recording identifying information?

Progress towards the Pyxis Recommendations (pages 25-26 and Appendix A)

- The VPD has met 21 of the 34 recommendations and is progressing towards the completion of the remaining 13; with an estimated completion time of the end of 2021 (details are in Appendix A on page 27).