

“Pages seventy-eight to eighty-four from *The Ferguson Report: An Erasure*”

In addition to engaging with all segments of Ferguson as part of implementing community policing, FPD should develop and implement a system that incorporates civilian input into all aspects of policing, including policy development, training, use-of-force review, and investigation of misconduct complaints:

10. Improve Officer Supervision

The recommendations set out here cannot be implemented without dedicated, skilled, and well-trained supervisors who police lawfully and without bias. FPD should:

- a. Provide all supervisors with specific supervisory training prior to assigning them to supervisory positions;
- b. Develop and require supervisors to use an “early intervention system” to objectively detect problematic patterns of officer misconduct, assist officers who need additional attention, and identify training and equipment needs;
- c. Support supervisors who encourage and guide respectful policing and implement community policing principles, and evaluate them on this basis. Remove supervisors who do not adequately review officer activity and reports or fail to support, through words or actions, unbiased policing;
- d. Ensure that an adequate number of qualified first-line supervisors are deployed in the field to allow supervisors to provide close and effective supervision to each officer under the supervisor’s direct command, provide officers with the direction and guidance necessary to improve and develop as officers, and to identify, correct, and prevent misconduct.

11. Recruiting, Hiring, and Promotion

— There are widespread concerns about the lack of diversity, especially race and gender diversity, among FPD officers. FPD should modify its systems for recruiting hiring and promotion to:

- a. Ensure that the department’s officer hiring and selection processes include an objective process for selection that employs reliable and valid selection devices that comport with best practices and federal anti-discrimination laws;
- b. In the case of lateral hires, scrutinize prior training and qualification records as well as complaint and disciplinary history;
- c. Implement validated pre-employment screening mechanisms to ensure temperamental and skill-set suitability for policing.

12. Develop Mechanisms to More Effectively Respond to Allegations of Officer Misconduct

— Responding to allegations of officer misconduct is critical not only to correct officer behavior and identify policy, training, or tactical concerns, but also to build community confidence and police legitimacy. FPD should:

- a. Modify procedures and practices for accepting complaints to make it easier and less intimidating for individuals to register formal complaints about police conduct, including providing complaint forms online and in various locations throughout the City and allowing for complaints to be submitted online and by third parties or anonymously;

— b. Require that all complaints be logged and investigated;

— c. Develop and implement a consistent, reliable, and fair process for investigating and responding to complaints of officer misconduct. As part of this process, FPD should

— 1) Investigate all misconduct complaints, even where the complainant indicates

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he or she does not want the complaint investigated, or wishes to remain anonymous

2) Not withdraw complaints without reaching a disposition;

d. Develop and implement a fair and consistent system for disciplining officers found to have committed misconduct;

e. Terminate officers found to have been materially untruthful in performance of their duties, including in completing reports or during internal affairs investigations;

f. Timely provide in writing to the Ferguson Prosecuting Attorney all impeachment information on officers who may testify or provide sworn reports, including findings of untruthfulness in internal affairs investigations, for disclosure to the defendant under *Brady v. Maryland*, 373 U.S. 83 (1963);

g. Document in a central location all misconduct complaints and investigations, including the nature of the complaint, the name of the officer, and the disposition of the investigation;

h. Maintain complete misconduct complaint investigative files in a central location;

i. Develop and implement a community-centered mediation program to resolve, as appropriate, allegations of officer misconduct.

13. Publically Share Information about the Nature and Impact of Police Activities

Transparency is a key component of good governance and community trust. Providing broad information to the public also facilitates constructive community engagement. FPD should:

a. Provide regular and specific public reports on police stop, search, arrest, ticketing, force, and community engagement activities, including particular problems and achievements, and describing the steps taken to address concerns;

b. Provide regular public reports on allegations of misconduct, including the nature of the complaint and its resolution;

c. Make available online and regularly update a complete set of police policies.

A. Ferguson Court Practices

1. Make Municipal Court Processes More Transparent

Restoring the legitimacy of the municipal justice system requires increased transparency regarding court operations to allow the public to assess whether the court is operating in a fair manner. The municipal court should:

a. Make public—through a variety of means, including prominent display on the City, police, and municipal court web pages—all court-related fines, fees, and bond amounts, and a description of the municipal court payment process, including court dates, payment options, and potential consequence for non-payment or missed court dates;

b. Create, adopt, and make public written procedures for all court operations;

c. Collect all orders currently in effect and make those orders accessible to the public, including by posting any such materials on the City, police, and municipal court web pages. Make public all new court orders and directives as they are issued;

d. Initiate a public education campaign to ensure individuals can have an accurate and complete understanding of how Ferguson’s municipal court operates, including that appearance in court without ability to pay an owed fine will not result in arrest;

e. Provide broadly available information to individuals regarding low-cost or cost-free legal assistance;

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f. Enhance public reporting by ensuring data provided to the Missouri Courts Administrator is accurate, and by making that and additional data available on City and court websites, including monthly reports indicating:

- 1) The number of warrants issued and currently outstanding;
- 2) The number of cases heard during the previous month;
- 3) The amount of fines imposed and collected, broken down by offense, including by race;
- 4) Data regarding the number of Missouri Department of Revenue license suspensions initiated by the court and the number of compliance letters enabling license reinstatement issued by the court.

g. Revis the municipal court website to enable these recommendations to be fully implemented.

2. Provide Complete and Accurate Information to a Person Charged with a Municipal Violation

In addition to making its processes more transparent to the public, the court should ensure that those with cases pending before the court are provided with adequate and reliable information about their case. The municipal court, in collaboration with the Patrol Division, should:

a. Ensure all FPD citations, summonses, and arrests are accompanied by sufficient, detailed information about the recipient’s rights and responsibilities, including:

- 1) The specific municipal violation charged;
- 2) A person’s options for addressing the charge, including whether in-person appearance is required or if alternative methods, including online payment, are available, and information regarding all pending deadlines;
- 3) A person’s right to challenge the charge in court;
- 4) The exact date and time of the court session at which the person receiving the charge must or may appear;
- 5) Information about how to seek a continuance for a court date;
- 6) The specific fine imposed, if the offense has a preset fine;
- 7) The processes available to seek a fine reduction for financial incapacity, consistent with recommendation four set forth below;
- 8) The penalties for failing to meet court requirements.

b. Develop and implement a secure online system for individuals to be able to access specific details about their case, including fines owed, payments made, and pending requirements and deadlines.

3. Change Court Procedures for Tracking and Resolving Municipal Charges to Simplify Court Processes and Expand Available Payment Options

The municipal court should:

- a. Strictly limit those offenses requiring in-person court appearance for resolution to those for which state law requires the defendant to make an initial appearance in court;
- b. Establish a process by which a person may seek a continuance of a court date, whether or not represented by counsel;
- c. Continue to implement its online payment system, and expand it to allow late payments, payment plan installments, bond payments, and other court payments to be made online;

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- d. Continue to develop and transition to an electronic records management system for court records to ensure all case information and events are tracked and accessible to court officials and FPD staff, as appropriate. Ensure electronic records management system has appropriate controls to limit user access and ability to alter case records;
- e. Ensure that the municipal court office is consistently staffed during posted business hours to allow those appearing at the court window of the police department seeking to resolve municipal charges to do so;
- f. Accept partial payments from individuals, and provide clear information to individuals about payment plan options.

4. Review Preset Fine Amounts and Implement System for Fine Reduction

The municipal court should:

- a. Immediately undertake a review of current fine amounts and ensure that they are consistent not only with regional but also statewide fine averages, are not overly punitive, and take into account the income of Ferguson residents;
- b. Develop and implement a process by which individuals can appear in court to seek proportioning of preset fines to their financial ability to pay.

5. Develop Effective Ability-to-Pay Assessment System and Improve Data Collection Regarding Imposed Fines

The municipal court should:

- a. Develop and implement consistent written criteria for conducting an assessment of an individual's ability to pay prior to the assessment of any fine, and upon any increase in the fine or related court costs and fees. The ability-to-pay assessment should include not only a consideration of the financial resources of an individual, but also a consideration of any documented fines owed to other municipal courts;
- b. Improve current procedures for collecting and tracking data regarding fine amounts imposed. Track initial fines imposed as an independent figure separate from any additional charges imposed during a case;
- e. Regularly conduct internal reviews of data regarding fine assessments. This review should include an analysis of fines imposed for the same offenses, including by race of the defendant, to ensure fine assessments for like offenses are set appropriately.

6. Revise Payment Plan Procedures and Provide Alternatives to Fine Payments for Resolving Municipal Charges

The municipal court should:

- a. Develop and implement a specific process by which a person can enroll in a payment plan that requires reasonable periodic payments. That process should include an assessment of a person's ability to pay to determine an appropriate periodic payment amount, although a required payment shall not exceed \$100. That process should also include a means for a person to seek a reduction in their monthly payment obligation in the event of a change in their financial circumstances;
- b. Provide more opportunities for a person to seek leave to pay a lower amount in a given month beyond the court's current practice of requiring appearance the first Wednesday of the month at 11:00 a.m. Adopt procedures allowing individuals to seek their first request for a one-time reduction outside of court, and to have such requests be automatically granted. Such procedures should provide that subsequent requests shall be granted liberally by the Municipal

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Judge, and denials of requests for extensions or reduced monthly payments shall be accompanied by a written explanation of why the request was denied;

e. Cease practice of automatically issuing a warrant when a person on a payment plan misses a payment, and adopt procedures that provide for appropriate warnings following a missed payment, consistent with recommendation eight set forth below;

d. Work with community organizations and other regional groups to develop alternative penalty options besides fines, including expanding community service options. Make all individuals eligible for community service.

~~7. Reform Trial Procedures to Ensure Full Compliance with Due Process Requirements~~

—The municipal court should take all necessary steps to ensure that the court’s trial procedures fully comport with due process such that defendants are provided with a fair and impartial forum to challenge the charges brought against them. As part of this effort, the court shall ensure that defendants taking their case to trial are provided with all evidence relevant to guilt determinations consistent with the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963), and other applicable law.

~~8. Stop Using Arrest Warrants as a Means of Collecting Owed Fines and Fees~~

—As Ferguson’s own Municipal Judge has recognized, municipal code violations should result in jail in only the rarest of circumstances. To begin to address these problems, Ferguson should only jail individuals for a failure to appear on or pay a municipal code violation penalty, if at all, if the following steps have been attempted in a particular case and have failed:

a. Enforcement of fines through alternative means, including:

- 1) Assessment of reasonable late fees;
- 2) Expanding options for payment through community services;
- 3) Modified payment plans with reasonable amounts due and payment procedures;
- 4) A show cause hearing on why a warrant should not issue, including an assessment of ability to pay, where requested. At this hearing the individual has a right to counsel and, if the individual is indigent, the court will assign counsel to represent the individual. *See* Mo. Sup. Ct. R. 37.65; Mo. Mun. Benchbook, Cir. Ct., Mun. Divs. § 13.8;

b. Personal service on the individual of the Order to Show Cause Motion that provides notice of the above information regarding right to counsel and the consequences of non-appearance; and

e. If the above mechanisms are unsuccessful at securing payment or otherwise resolving the case, the court should ensure that any arrest warrant issued has the instruction that it be executed only on days that the court is in session so that the individual can be brought in immediately before the court to enable the above procedures to be implemented. *See* Mo. Mun. Benchbook, Cir. Ct., Mun. Divs. § 13.8 (“If a defendant fails to appear in court on the return date of the order to show cause or motion for contempt, a warrant should be issued to get the defendant before the court for the hearing.”) (emphasis added).

~~9. Allow Warrants to be Recalled Without the Payment of Bond~~

—Ferguson recently extended its warrant recall program, also called an “amnesty” program, which allows individuals to have municipal warrants recalled and to receive a new court date without paying a bond. This program should be made permanent. The municipal court should:

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- a. Allow all individuals to seek warrant recall in writing or via telephone, whether represented by an attorney or not;
- b. Provide information to a participating individual at the time of the warrant recall, including the number of charges pending, the fine amount due if a charge has been assessed, the options available to pay assessed fines, the deadlines for doing so, and the requirements, if any, for appearing in court.

~~10. Modify Bond Amounts and Bond and Detention Procedures~~

— Ferguson has two separate municipal code bond schedules and processes: one for warrantless arrests, and another for arrests pursuant to warrants issued by the municipal court. Ferguson’s municipal court recently limited the number of municipal code violations for which officers can jail an individual ~~with~~ ~~out a war~~ ~~an~~, and reduced the amount of time the jail may hold a defendant who is unable to post bond from 72 to 12 hours. These changes are a positive start, but further reforms are necessary. The City and municipal court should:

- a. Limit the amount of time the jail may hold a defendant unable to post bond on *all* arrests for municipal code violations or municipal arrest warrants to 12 hours;
- b. Establish procedures for setting bond amounts for warrantless and warrant-based detainees that are consistent with the Equal Protection Clause’s prohibition on incarcerating individuals on the basis of indigency, and that ensure bond shall in no case exceed \$100 for a person arrested pursuant to a municipal warrant, regardless of the number of pending charges;
- c. At the time of bond payment, provide individuals with the option of applying a bond fee to underlying fines and costs, including in the event of forfeiture;
- d. Take steps necessary, including the continued development of a computerized court records management system as discussed above, to enable court staff, FPD officers, and FPD correctional officers to access case information so that a person has the option of paying the full underlying fine owed in lieu of bond upon being arrested;
- e. Increase options for making a bond payment, including allowing bond payment by credit card and through the online payment system, whether by a person in jail or outside of the jail;
- f. Institute closer oversight and tracking of bond payment acceptance by FPD officers and FPD correctional officers;
- g. Initiate practice of issuing bond refund checks immediately upon a defendant paying their fine in full and being owed a bond refund;
- h. Ensure that all court staff, FPD officers, and FPD correctional officers understand Ferguson’s bond rules and procedures.

~~11. Consistently Provide “Compliance Letters” Necessary for Driver’s License Reinstatement After a Person Makes an Appearance Following a License Suspension~~

— Per official policy, the municipal court provides people who have had their licenses suspended pursuant to Mo. Rev. Stat. § 302.341.1 with compliance letters enabling the suspension to be lifted only once the underlying fine has been paid in full. Court staff told us, however, that in “sympathetic cases,” they provide compliance letters that enable people to have their licenses reinstated. The court should adopt and implement a policy of providing individuals with compliance letters immediately upon a person appearing in court following a license suspension pursuant to this statute.

~~12. Close Cases that Remain on the Court’s Docket Solely Because of Failure to Appear~~

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Charges or Bond Forfeitures

— In September 2014, the City of Ferguson repealed Ferguson Mun. Code § 13-58, which allowed the imposition of an additional “Failure to Appear” charge, fines, and fees in response to missed appearances and payments. Nonetheless, many cases remain pending on the court’s docket solely on account of charges, fines, and fees issued pursuant to this statute or because of quasi-judicial bond forfeiture practices. The City and municipal court should:

- Close all municipal cases in which the individual has paid fines equal or greater to the amount of the fine assessed for the original municipal code violation—through Failure to Appear fines and fees or forfeited bond payments—and clear all associated warrants;
- Remove all Failure to Appear related charges, fines, and fees from current cases, and close all cases in which only a Failure to Appear charge, fine, or fee remains pending;
- Immediately provide compliance letters so that license suspensions are lifted for all individuals whose cases are closed pursuant to these reforms.

13. Collaborate with Other Municipalities and the State of Missouri to Implement Reforms

— These recommendations should be closely evaluated and, as appropriate, implemented by other municipalities. We also recommend that the City and other municipalities work collaboratively with the state of Missouri on issues requiring statewide action, and further recommend:

- Reform of Mo. Rev. Stat. § 302.341.1, which requires the suspension of individuals’ driving licenses in certain cases where they do not appear or timely pay traffic charges involving moving violations;
- Increased oversight of municipal courts in St. Louis County and throughout the state of Missouri to ensure that courts operate in a manner consistent with due process, equal protection, and other requirements of the Constitution and other laws.

VI. CONCLUSION

— Our investigation indicates that Ferguson as a City has the capacity to reform its approach to law enforcement. A small municipal department may offer greater potential for officers to form partnerships and have frequent, positive interactions with Ferguson residents, repairing and maintaining police-community relationships. *See, e.g.,* Jim Burack, *Putting the “Local” Back in Local Law Enforcement*, in *American Policing in 2022: Essays on the Future of the Profession* 79–83 (Debra R. Cohen McCullough & Deborah L. Spence, eds., 2012). These reform efforts will be well worth the considerable time and dedication they will require, as they have the potential to make Ferguson safer and more united.

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Attention: History,
temperamental as it's sold,
wishes to remain anonymous
in nature, name and potential
consequence. Ensuring a number
of revisions, alternate endings,
exact dates, as appropriate.

At the window, a figure (separate,
his offenses), motions for me
to get closer. With an ear
to the glass, I remain silent.

Anything you say can and will be—