

## Questions and Answers from the Public Community Event (October 24, 2023)

### Aurora Police Department

These are questions the Community Advisory Council received prior to and during the Public Community Event held on October 24, 2023. All questions have been copied verbatim from the submitted questions. These questions were shared with the Aurora Police Department and the Police Department provided the following answers:

#### Question #1 (received by email):

Hello,

I am submitting these questions (total of four) for consideration at the upcoming Community Meeting on October 24th with respect to the Consent Decree progress.

In the recent 18th District Attorney Disparity Analysis (<https://data.dacolorado.org/18th-disparity-analysis>), it was found that while only 7% of the population in the 18th Judicial District are Black, 17.3% of the individuals referred to the 18th Judicial DA's Office for prosecution are Black. Given this disparity, here are my questions:

- 1) To what extent has APD (and APD practices) contributed to this reported disparity?
- 2) To what extent has APD provided data to the 18th District Attorney's office for the study, and/or indicated to the 18th District Attorney that APD data could not be retrieved concerning race/ethnicity and charges?
- 3) To what extent has APD applied this data to the examination of disparity in arrests/charges filed in Aurora?
- 4) Would you agree that this study suggests that prosecutorial discretion is critical in assuring equal treatment in charging? Outcomes? How does that apply in Aurora to consent decree compliance?

#### Answer from APD:

The Aurora Police Department is not responsible for the analysis or information in the 18<sup>th</sup> Judicial District report. These questions are best addressed to the authors of the report. APD respects the independence of each of the judicial districts and their respective professional prosecutors and staff. APD's role in the criminal justice process is to refer misdemeanor and felony charges when probable cause exists and provide all associated evidence and reports to the appropriate judicial district. Each District Attorney Office is

responsible for determining if it proceeds with prosecution of each of the cases based on their own criteria.

## City of Aurora

These are questions the Community Advisory Council received prior to and during the Public Community Event held on October 24, 2023. All questions have been copied verbatim from the submitted questions. These questions were shared with the City of Aurora and the City provided the following answers:

### Question #2 (received by email):

I am a private attorney who contracts with OADC to represent indigent clients who have a conflict with the public defender's office. I am interested in consent decree compliance because transparency is extremely important in the criminal justice system. I am also very troubled by the news as of late concerning some counsel members' claims that having a contract-based system would be cheaper than the Aurora Municipal Public Defender's Office. What is the price for constitutional rights? Is the monitor looking into this clearly intentional attempt to interfere with zealous and righteous advocacy? If not - you owe your community an explanation as to why.

In regards to the Consent Decree Monitor report, page 16 of the 10/15/23 report states "Despite these positive developments, continued delays in implementing the new use of force data system have delayed further progress and impacted APD's ability to analyze its data and help remediate any deficiencies in officer performance. APD currently cannot automatically retrieve an officer's use of force history from its system. Additionally, PD cannot reliably identify the exact number of use of force allegations that were sustained against an officer, due to the lack of mandatory reporting fields in AIM. APD's own audit of its historical internal investigations and citizen complaint investigations, found that it was unable to identify outcomes due to incomplete data submitted to the AIM system."

This is just one example of how detrimental the lack of data systems is to compliance. This issue effects compliance in the area of use of force, contacts - whether contacts resulted in arrests of community members based on race, or in the midst of a mental health crisis, and discipline - both disciplinary records/history and transparency.

How does this effect compliance with constitutionally and statutorily mandated discovery disclosures, the capability and completeness of any subpoena duces tecum for IA records, or its obligation to report certain actions to POST?

As an attorney who practices in Aurora Municipal Court and Adams/Arapahoe Counties, where I am defending community members charged with crimes by the Aurora Police Department, how can I assure them we are in fact obtaining complete and accurate records?

Thank you,

### Answer from the City:

The Aurora Police Department is compliant with discovery requests from the Aurora Municipal Court. The data issues noted in the Consent Decree Monitor's Reporting Period 5 report relate the ability of department to analyze the aggregate data from contact data forms and use of force incidents to examine trends and potential disparities.

### Question #3 (received by email):

Aurora Monitor,

My question is:

The consent decree came about because of a recognition of the systemic abuses of the Aurora Police Department. Over the past 3 years, the City Attorneys have similarly been shown to have systemic issues and abuses of people's rights. The Aurora Municipal Public Defender Office helped uncover 1,000 instances of discovery violations. Instead of looking for reforms in the city attorneys, city council is trying to get rid of the one office without documented systemic abuses (the Public Defender). How can citizens of Aurora be confident in the city implementing the consent decree when it wants to disband the only office actually pushing back against the systemic issues in the City Attorney Office and police department?

If this is too long:

How can we trust city council to hold police and prosecutors accountable for their systemic rights violations when they are more interested in disbanding the office responsible for uncovering much of those abuses?

#### Answer from the City:

City Council passed a resolution on October 9th directing city staff to prepare a request for proposals to provide defense counsel to indigent defendants in the Aurora Municipal Court. Council will discuss the draft request for proposals at an upcoming meeting and provide further guidance on how it wishes to proceed.

Lastly: Do you consider the Public Defenders a Public Safety stakeholder, and if so, how do you feel about the city council's desire to remove them in favor of lowest contract bidders with no stake in the public safety of Aurora?

#### Answer from the Monitor:

We have engaged with the Chief Public Defender on multiple occasions to solicit input and insight on relevant information and happy to continue to do so.

### Question #4 (received via chat during the event):

What data does the City have concerning those individuals who are not diverted from criminal system?

#### Answer from the City:

The City tracks if individuals are arrested or taken in on warrants during CRT/AMRT calls for service, but the AMRT/CRT programs do not track longitudinal data for those entering

the criminal justice system. However, if someone is arrested and the CRT/AMRT team has engaged with the client in the past and during the time of arrest, we will do our best to appear for court dates and work with the judicial districts to advocate for rehabilitative approaches such as court ordered treatment/ medications, sober living, etc. We recognize that the criminal justice system is not the most effective way to support individuals with severe and persistent mental illness. and we are dedicated to supporting and advocating for those individuals to work toward a rehabilitative approach when possible.

**The current system lacks adequate supports for severe and persistent mental illness, especially anything proactive, accessible, and trauma informed. How is the city thinking about proactive supports that could prevent interaction with PD and the Justice system?**

Answer from the City:

The City continues to explore innovative approaches and programming to support our community members that may require additional services and approaches to prevent unnecessary PD/ criminal justice involvement. Currently, the city provides trauma informed approaches to emergency services, such as our civilian led mobile response team (AMRT) and law enforcement co-responder model (CRT) to allow for the best quality of care in instances where emergency services are involved. The City also continues to partner with and fund behavioral health agencies and community providers to implement creative programming to also aid in this effort to better support the Aurora community and its most acute members.

Consent Decree Monitor:

These are questions the Community Advisory Council received prior to and during the Public Community Event held on October 24, 2023. All questions have been copied verbatim from the submitted questions.

Question #5 (received by email):

I have worked for the City as a Public Defender since NYE 2012.

As support for its findings concerning the disparate use of force against Black, Hispanic, and Non-White members of the community, contemporaneous to municipal charges and the resulting Mandate, #16, the Sept. 15, 2021 report refers to a \$285,000 settlement with Aurora arising from Aurora Police's 2016 use of force against a resident, who was arrested for failure to obey a lawful order, resisting arrest, and disturbing the peace. According to the lawsuit, Aurora Police officers responded to a noise complaint and ordered the man to come out of his garage.

See ACLU Settles Case With Aurora After Police Brutalize and Unlawfully Arrest Alberto Torres, ACLU, Dec. 10, 2020.

When he did not immediately exit (because he was calling to his wife who spoke better English), officers brandished a firearm, grabbed him, threw him to the ground, and handcuffed him, causing serious injuries.

I represented Mr. Torres on the charges of failure to obey, resisting and disturbing the peace as a public defender here in Aurora Municipal court. He was acquitted of the first 2 by an Aurora Jury of his peers.

In September of 2021, after the release of the Attorney General's report, I had a jury trial. Covid was still fresh and jury panelists were spread across the room to keep distance.

My client was a Black man, a refugee, from Liberia. A Lawful Permanent Resident. He was poor. He required the assistance of a TWI interpreter. In jury selection I asked whether anyone believed it was possible for police to allow bias for or against a particular race to affect their decision making.

A young Black woman on the jury panel sitting behind me- yelled out. "It's not just possible - if you live in Aurora that is facts." She continued on, referring to the AG report. Quite frankly she educated every single person in the Court room that day.

My client was charged for yelling and raising a chair in self defense against a white gentleman who held himself out as a security guard and had used a pepper-ball launcher against my client, resulting in injuries.

One of the charges was disorderly conduct (abusive language or threats). The lead officers did not note much less accommodate his need for an interpreter.

The jury acquitted on all charges.

That my client was charged instead of the rogue wannabe cop with the pepper-ball launcher for crimes that were not committed was not extraordinary then. And it isn't now.

That day though- felt like here in Aurora- we were about to turn a corner. We were going to stop talking possibilities and instead use facts to move ahead.

This 5th report demonstrates that we have abandoned facts and reverted again to possibilities, speculation and excessive force (in these cases deadly) against minority non white community members.

How do you reconcile the blatant disregard for obligations to track and utilize data related to force, discipline, municipal charges (failure to obey, resisting, trespass), contacts with people suffering from mental health conditions with an earnest attempt at compliance?

Answer from the Monitor:

We would not characterize APD's efforts to be in compliance as blatant disregard. As detailed in the focus issue dedicated to this issue, there have been significant delays but we are encouraged by recent developments on data systems. We have been addressing these delays by publicly reporting these issues for the community's awareness and ensuring that the City prioritize being in compliance with all of the data mandates as soon as possible so APD can be a data-driven agency that can be transparent with the community.

Question #6 (received by email):

How do you look past the evident and apparently reliable data sources provided by other departments (i.e. court administrator, my office) in 2020/2021 and accept that the City's "vendor" and "system issues" are legitimate?

Answer from the Monitor:

We have not yet looked at external data analysis but will reach out to have discussions.

What efforts has the independent monitor put toward utilizing other City departments to access data that at minimum could demonstrate some level of compliance- or commitment to the change that we believed would occur as of 2 years last month?

Answer from the Monitor:

There are many areas where the City achieved substantial compliance in the last year and half. APD is working with City IT department to best leverage existing data within City departments, such as locations, to build and improve its data systems.

Question #7 (received by email):

I write as an attorney member of the Aurora Public Defender Commission, with some questions in advance of next week's Consent Decree Monitorship Progress Meeting. Specifically, my questions relate to Mandate 16, "Addressing Racial Bias in Policing – Goals and Measurement." The September 15, 2021 Attorney General's report specifically called for greater detail in APD policies against racially biased policing; more specific standards and expectations for APD officers when they make a stop or arrest or use force; better tracking of outcomes for people arrested on misdemeanor charges to identify discrepancies between arrest rates and prosecution rates;

and improved training for police academy cadets and in-service officers, among other recommendations.

On pg. 39 of the October 2022 report, the Monitor asserted, “APD requested clarity on what will constitute outcome data relative to the requirement of tracking misdemeanor arrest outcomes, given the assertion that the outcome of those arrests are not within the control of APD, but rather rest with prosecutors and the judiciary. In upcoming months, the Monitor will work with the City to provide clarity on this and other issues related to outcomes. Building the foundation for compliance with this mandate is underway and the Monitor will be working with the City to perfect the foundation and developing the precise outcome metrics that will be utilized throughout the term of the Monitor.”

What are the precise outcome metrics that were decided upon? How will measuring those outcome metrics serve a determination whether APD is on the right track with respect to its history of racial bias in policing?

Answer from the Monitor:

This work is ongoing and the Monitor will report these efforts once they are finalized. We will seek a meeting with public defenders to understand what data and metrics they believe would be important and seek input relative to cases which should be flagged for our review.

The 10.15.23 report indicates that as of August 15, 2023, Mandate 16 remained on a cautionary track. In relation to Mandate 16, that 10.15.23 report asserts, “The City and the Monitoring team continued working on establishing baselines of data currently being collected, data systems which are currently in use, how these systems link together, how data is analyzed, how data analysis is shared to drive strategies forward, and how racial and ethnic disparities are measured and tracked.”

Question #8 (received by email):

What data, specifically, is being collected in relation to this mandate? When will the baseline data collection be completed? How is data being collected and collated from various systems? How is data being analyzed according to the required metrics (see above questions)? What are the specific goals of the department in relation to eliminating racist policing? What are the department’s strategies or meeting those goals?

Answer from the Monitor:

The National Policing Institute’s Baseline Study, which will be published in the next 30-60 days, will provide information on this question. We will update you once the report is published. The report will address whether the data itself will show biased policing.

Question #9 (received via chat during the event):

- 1) How will the expected data track case outcomes on failure to obey or other discretionary municipal charges?
- 2) How will the expected data track the outcomes on discretionary municipal charges Failure to obey, Resisting, Trespass as expressly requested by the attorney general and whether they involve mental health, use of force or disproportionately non-white individuals?

Answer from the Monitor:

We are continuing our work on the development of metrics required by this mandate with APD, and will begin working with outside entities as needed, specifically for the outcome of misdemeanor cases. We expect the metrics to be fully developed in the next reporting period.