CALIFORNIA DEPARTMENT OF JUSTICE

SACRAMENTO POLICE DEPARTMENT

REPORT & RECOMMENDATIONS

2019

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EXECUTIVE SUMMARY

On March 27, 2018, following the fatal shooting of Stephon Alonzo Clark by members of the Sacramento Police Department (SPD), Attorney General Xavier Becerra announced that the California Department of Justice (DOJ) would provide independent oversight of the Sacramento Police Department's criminal investigation of the shooting.

Additionally, DOJ agreed to provide an independent assessment of the Sacramento Police Department's use of force-related policies, training, and practices to help identify possible ways to achieve safer outcomes for community members and officers alike. DOJ is undertaking these activities at the request of Sacramento Chief of Police Daniel Hahn and Sacramento Mayor Darrell Steinberg. SPD is not alone among communities trying to identify how best to ensure that policing is safe, effective, and constitutional. Sacramento should be lauded for reaching out and voluntarily requesting assistance in this critical endeavor. Inviting outside scrutiny of the department is a hallmark of strong leadership and sends an important signal about the department's commitment to continued progress.

This report discusses the findings and recommendations of DOJ's assessment of SPD's use of force-related policies, training, and practices. The purpose of this assessment—which is entirely separate from the concurrent criminal investigation—is to provide the Sacramento Police Department (SPD) with recommendations grounded in evidence and promising practices from around the country to help guide the reform efforts it has independently committed to pursue. In conducting the assessment, DOJ was assisted by nationally recognized law enforcement leaders and experts with deep experience on the issues evaluated.

DOJ's assessment and recommendations address the following six areas:

1. **Use of Force Policies**
2. **Use of Force Reporting and Investigation**
3. **Use of Force Training**
4. **Officer-Involved Shooting Incident Review**
5. **Personnel Complaint Procedures**
6. **Community Engagement and Transparency**

This report also includes a review of SPD's officer-involved shootings that occurred from April 2013 through March 2018 and recommendations flowing from that assessment. Not including the shooting of Stephon Clark, a total of 18 officer-involved shootings occurred during this period.

KEY FINDINGS

Overall, DOJ found SPD personnel to be professional, thoughtful, and committed to making change. Throughout the process, personnel at all levels of the police department have been open, cooperative, and receptive to evaluation and improvement. At the outset of our review, we discovered that SPD's command and supervisory staff had already begun thinking strategically about how to improve systems internally and build relations externally. And SPD has taken significant steps in this direction, recently creating a foot pursuit policy, strengthening its body worn camera policy, and engaging in enhanced transparency efforts, such as the timely public release of use of force statistics and audio and video recordings in officer-involved shootings and other critical incidents.

However, DOJ also observed that SPD has significant deficiencies in some of the operational systems assessed. For example, DOJ identified deficiencies ranging from outdated Use of Force policies, lack of standardization and rigor in use of force internal investigations and training, and lack of systemic information collection and accountability measures, particularly with regard to the personnel complaint process.

Focusing on the six areas assessed, DOJ identified a range of promising practices engaged in by SPD. DOJ also identified areas for improvement in each of the areas and has made a series of interrelated and mutually reinforcing recommendations intended to assist SPD in managing use of force and protecting community members and officers. The following is a top-level summary of DOJ's recommendations to date. The recommendations, as well as a discussion of areas in which SPD excels, are set forth in more detail in the body of the report.

SUMMARY OF RECOMMENDATIONS

USE OF FORCE POLICIES

- SPD's use of force-related policies should more clearly define and describe when force is, and is not, authorized; create standards that more clearly define and build upon minimum legal requirements; and more clearly and consistently articulate a commitment to protecting the sanctity of life and de-escalation.

- SPD's use of force-related policies should affirm the importance of proportionality (the concept that the nature or severity of the force that an officer uses should be consistent with the nature of the threat that a subject poses) and require that officers exhaust all reasonably available alternatives before using deadly force.

- SPD should prohibit certain problematic uses of force, including needlessly high-risk force, such as carotid restraints and shooting at or from moving vehicles.

- SPD should develop and implement policies for each use of force instrument its officers are authorized to use, including batons, chemical agents, and empty hand tactics.

- SPD should provide more guidance, clarity, and specificity to align with best practices in a variety of Use of Force policies, including:
    - Providing clear and succinct guidance on when officers may initiate a foot pursuit, including that the mere act of running may not constitute a sufficient basis to engage in a foot pursuit.
    - Providing specific guidance on when to unholster, draw, and exhibit firearms—ensuring that these instances are reported appropriately.
    - Including provisions in its firearm policy to better ensure the safety of other officers and bystanders.
    - Requiring that medical assistance be rendered as soon as reasonably possible after a use of force incident.
    - Requiring officers to intervene during a use of force incident when the force used is outside of departmental policy.
    - Modifying the use of Conducted Energy Devices and canines to reduce unnecessary injuries.

USE OF FORCE REPORTING AND INVESTIGATION

- SPD should create a general order dedicated to use of force reporting, investigations and review.
- SPD should categorize reportable uses of force into three levels and specify the reporting, investigation, and review process at each level, including any administrative investigation resulting from a use of force incident.
- SPD should establish a multidisciplinary team to separately conduct both the criminal and administrative investigations of the most serious use of force incidents.
- SPD should establish a Use of Force Review Board to review and analyze the results of these investigations so it can determine not only whether the use of force was within legal standards and SPD policy but also whether training and other Department-level considerations need to be addressed.
- SPD should identify the nature and extent of the use of force information it will routinely release to the public.
- SPD should consider engaging with an external agency regarding a potential role for that agency in future use of force investigations and in crafting improvements informed by serious use of force incidents.

USE OF FORCE TRAINING

- SPD's Training Academy should place greater emphasis on teaching officers to have a "guardian" mindset. SPD should establish a Curriculum Design Committee, Training Committee, and formalized process for instructor selection and development, to ensure that its Training Academy staff and the content of training initiatives consistently reflect and embody the Department's mission, core values, and policies.

- SPD should find meaningful ways to incorporate members of local colleges and universities, community-based organizations, and community members into the curriculum and lesson plan development process, as well as instructional activities.

- SPD should ensure its use of force training emphasizes critical-decision making skills and require such training annually for all staff, regardless of rank.

INCIDENT REVIEW: OFFICER-INVOLVED SHOOTING AND RELATED TACTICS

- SPD should develop a manual that governs both administrative and criminal investigations of officer-involved shootings.

- SPD should require either a specialized Force Investigation Team or its Internal Affairs Division investigate every officer-involved shooting to determine if policies and/or training were violated during the incident.

- Detectives who are assigned to conduct investigations of officer-involved shootings should receive relevant training.

- SPD should standardize its investigative case files, and ensure that they include documents that will facilitate various kinds of reviews following the conclusion of the investigation.

- SPD should conduct a formal after-action review, which includes supervisors and command staff, following every officer-involved shooting.

- SPD should require supervisors and chain-of-command to review all use of force cases, including officer-involved shootings and serious uses of force.

- SPD should ensure its officers are effectively employing cover, distance, and time tactics to minimize the need for deadly force.

- SPD should assess its practices and provide officers with guidance on the discharge of firearms in situations that may endanger bystanders and other officers.

PERSONNEL COMPLAINT PROCEDURES

- SPD should adopt a general order that outlines its complaint intake, classification, investigation and review processes.
- SPD should require that all complaints be accepted and forwarded to Internal Affairs for tracking, review, and assignment. Certain types of serious complaint investigations should be required to be handled by Internal Affairs as a matter of policy.
- SPD should establish a complaint classification system, that among other things, accounts for the seriousness of the offense.
- SPD should develop a meaningful Early Intervention System.
- SPD should clarify roles and responsibilities with respect to complaint procedures with the Office of Public Safety Accountability (OPSA) and consider entering into a memorandum of understanding with OPSA to memorialize that agreement.

COMMUNITY ENGAGEMENT AND TRANSPARENCY

- SPD should develop and implement a community outreach plan that includes regularly scheduled and broadly accessible meetings with Sacramento residents and community-based organizations.
- SPD should strive for greater transparency by consistently releasing information regarding use of force and other related topics.

CONCLUSION

We applaud SPD for its express commitment to improvement and working with the community. DOJ hopes that this report is a useful tool for the city and SPD as they continue this work. We recommend that SPD—in consultation with community stakeholders, the Sacramento Police Officers Association, the Sacramento City Council, the Office of Public Safety and Accountability, and the Sacramento Community Police Review Commission—consider our recommendations for immediate implementation.

THE REVIEW TEAM

In order to conduct a review of this scope in a time period that is most useful to SPD and the community it is entrusted to serve, DOJ assembled a team consisting of attorneys from its Civil Rights Enforcement Section, as well as social scientists from the DOJ Research Center to work alongside our experts. DOJ engaged subject matter experts from 21st Century Policing Solutions, LLC, providing SPD with access to and insight from a diverse, seasoned group of professionals led by Ronald L. Davis, former director of the Office of Community Oriented Policing Services (COPS) of the United States Department of Justice under U.S. Attorney General Eric Holder, executive director of President Obama's Task Force on 21st Century Policing, and a 28-year veteran of law enforcement agencies here in California. In addition, DOJ's review team includes Professor Steven Raphael from the Goldman School of Public Policy at the University of California, Berkeley, who assisted to provide an evidence-based research perspective. Professor Raphael's research has encompassed complex systemic problems including criminal justice reform and racial inequality.

In addition to Ronald Davis, the 21st Century Policing team was composed of a diverse set of leaders in policing including: Nola Joyce, former Deputy Commissioner and Chief Administrative Officer for the Philadelphia Police Department; Charles Ramsey, former Police Chief of the Washington D.C. and Philadelphia Police Departments and co-chair of President Obama's Task Force on 21st Century Policing; Sean Smoot, Director and Chief Counsel for the Police Benevolent and Protective Association of Illinois and a member of President Obama's Task Force on 21st Century Policing; Roberto Villasenor, former Chief of Tucson Police Department and member of President Obama's Task Force on 21st Century Policing; Kathleen O'Toole, former Chief of the Seattle Police Department and Boston Police Department; and Matthew Barge, federal court-appointed monitor and police practices legal and policy expert.

BACKGROUND

Sacramento is a charter city governed by a nine-member City Council, consisting of the Mayor and eight other members elected by Sacramento residents.[1] The City Council appoints a City Manager to serve as the Chief Executive Officer of Sacramento. Among other responsibilities, the City Manager oversees and supervises the Chief of the Sacramento Police Department. The City Council also appoints the City Attorney, who is tasked with representing the Police Department in civil litigation.[2]

SACRAMENTO POLICE DEPARTMENT

The City Charter establishes the Police Department[3] and the powers and duties of the Chief of Police.[4] The current Chief of Police, Daniel Hahn, was sworn in on August 11, 2017. He oversees a department that, in 2016, employed 697 sworn officers and 269 civilian employees.[5] The Department itself is divided into four area commands—North, Central, East, and South. Area commands are divided into six police districts, and these districts are further divided into police beats patrolled by assigned officers and their direct supervisory sergeants.[6] Each area command is overseen by a captain, and lieutenants supervise various shifts in each command.[7]

Sacramento police officers are represented by the Sacramento Police Officers Association, which has a collective bargaining contract with the City and serves as the sole collective-bargaining agent for employees in the classifications of Police Sergeant and Police Officer, amongst other positions.[8]

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[1] City of Sacramento Charter, Article III, section 21, Accessed November 6, 2018. *Available at* http://www.qcode.us/codes/sacramento/.
[2] City of Sacramento Charter, Article VI, section 72, Accessed November 8, 2018. *Available at* http://www.qcode.us/codes/sacramento/.
[3] City of Sacramento Charter, Article VIII, section 99, Accessed November 6, 2018. *Available at* http://www.qcode.us/codes/sacramento/.
[4] *Id*. at section 100.
[5] Sacramento Police Department 2016 Annual Report, Accessed November 7, 2018. *Available at* https://www.cityofsacramento.org/-/media/Corporate/Files/Police/About-SPD/Annual-Reports/ar16.pdf?la=en.
[6] City of Sacramento, Neighborhood Maps, Accessed November 7, 2018. *Available at* https://www.cityofsacramento.org/Police/Crime/Neighborhood-Maps.
[7] Sacramento Police Department, 2016 Annual Report, *supra* note 5.
[8] City of Sacramento and Sacramento Police Officers Association, Labor Agreement Covering Employees in the Police Department Unit 2017-2019, Accessed November 8, 2018. *Available at* https://www.cityofsacramento.org/-/media/Corporate/Files/HR/Divisions/LaborRelations/Agreements/SPOA.pdf?la=en.

The SPD provided the review team with the latest statistics on officer demographics:

2018 Filled Sworn – Career				
	Male	**Female**	**Total**	**Percentage of Total**
White	405	77	482	72.1%
Hispanic	59	13	72	10.7%
Asian	49	9	58	8.7%
African American	25	7	32	4.7%
Filipino	11	0	11	1.6%
Native American	5	1	6	.08%
Middle Eastern	1	0	1	.01%
Two or more/ Other	5	1	6	.09%
Total	**560**	**108**	**668**	**100%**

In comparison, according to recent census data, Sacramento is home to a more diverse community than is reflected in officer demographics. Of a total population of approximately 480,556 residents, the three most populous ethnic groups are White (34 percent), Hispanic (28 percent) and Asian (16 percent).[9] The female population in Sacramento slightly outnumbers the male (51.5 percent versus 48.5 percent).[10]

INDEPENDENT OVERSIGHT

In 1999, the Mayor and City Council established the Office of Police Accountability for the purpose of monitoring the investigation of complaints regarding the SPD.[11] In July 2004, the Office's responsibilities were expanded to include complaints regarding the Sacramento Fire Department, and the Office was renamed the Office of Public Safety Accountability (OPSA).[12] OPSA accepts, audits, and provides an independent review of complaints involving public safety employees, including police officers.[13] In order to give OPSA greater independence from the SPD, in July 2017, Sacramento moved OPSA from under the supervision of the City Manager to the supervision of the Mayor and City Council.[14]

In 2015, the City Council established the Sacramento Community Police Review Commission (SCPRC) to provide community participation in making recommendations and reviewing city

[9] *See* City of Sacramento, Office of the City Auditor, *2017 Audit of the City's Gender and Ethnic Diversity*, Report 2018-01 (January 2018). *Available at* https://www.cityofsacramento.org/-/media/Corporate/Files/Auditor/Audit-Reports/2017Audit-of-the-Citys-Gender-and-Ethnic-Diversity.pdf?la=en.
[10] *Id.*
[11] City of Sacramento Office of Public Safety Accountability, Annual Report 2016, p. 6.
[12] *Id.*
[13] *Id.*
[14] City of Sacramento Ordinance No. 2016-0054 added chapter 2.22 to the Sacramento City Code. *Available at* http://qcode.us/codes/sacramento/revisions/2016-0054.pdf.

policing initiatives and programs.[15] The SCPRC has the power to "advise and make recommendations to the City Council regarding police policy, procedures, and best practices, including those related to community relations, hiring, and training.."[16] The SCPRC is, in turn, required to review quarterly reports from the OPSA consistent with Penal Code § 832.7, subdivision (c),[17] and to report annually to the Mayor and the City Council "regarding the activities of the commission and the Sacramento Police Department's efforts to strengthen bias-free policing and community-police relations."[18] The Mayor appoints eleven members to the SCPRC, each serving a four-year term.[19] The SCPRC is required to hold at least nine meetings per year.[20] SCPRC's first meeting was held in 2015.[21]

[15] City of Sacramento Ordinance No. 2016-0055, § 2. added chapter 2.110 to the Sacramento City Code. *Available at* http://www.qcode.us/codes/sacramento/view.php?topic=2-2_110-2_110_010&frames=on.

[16] Sacramento City Code § 2.110.030. http://www.qcode.us/codes/sacramento/view.php?topic=2-2_110-2_110_030&frames=on.

[17] Pen. Code § 832.7(c) states in pertinent part, "a department or agency that employs peace or custodial officers may disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers if that information is in a form which does not identify the individuals involved."

[18] *Id.*

[19] Sacramento City Code § 2.110.040.

[20] *Id.*

[21] City of Sacramento, Sacramento Community Police Commission Archived Meetings. *Available at* http://sacramento.granicus.com/viewpublisher.php?view_id=46. (The agenda, draft minutes, audio, and video are available at the link).

Shortly following the March 18, 2018 fatal shooting of Stephon Alonzo Clark by members of the Sacramento Police Department (SPD), Attorney General Xavier Becerra announced that the California Department of Justice (DOJ) would provide independent oversight of the Sacramento Police Department's criminal investigation of the shooting.

The question of whether a crime was committed during an officer-involved shooting is critically important and must be answered. However, such an inquiry alone will not identify potential system-wide changes to policies and practices that may make our communities and officers more safe. Accordingly, in addition to providing independent oversight of the criminal investigation, DOJ agreed to provide an independent assessment of the Sacramento Police Department's use of force-related policies, training, and practices. The goal of this assessment was to help identify possible ways to achieve safer outcomes for community members and officers alike.

Sacramento Chief of Police Daniel Hahn and Sacramento Mayor Darrell Steinberg requested DOJ's assistance. SPD is not alone among communities across the country trying to identify how to best ensure that policing is safe, effective, and constitutional.[22] DOJ applauds Sacramento for reaching out and voluntarily requesting assistance and opening itself up to outside scrutiny.

OUTREACH

Since beginning this assessment in April 2018, in addition to numerous site visits and interviews, DOJ participated in ride-alongs, toured SPD's training facilities, observed a variety of training programs, and reviewed thousands of pages of documents. This process enabled DOJ to better understand both SPD policy—the rules which govern conduct—and practices—how those rules

[22] Some commentators have expressed concern that adoption of more rigorous use of force policies or similar measures may impact the ability of officers to address crime. However, there are numerous examples of cities across the country who have implemented more stringent policies and have not seen increased crime rates. For example, according to a Harvard study regarding the impact of a consent decree on the Los Angeles Police Department, "If the consent decree has kept officers from dealing with crime or criminals, there is no sign of it in the data on enforcement activity." *See* Stone, Foglesong, and Cole, *Policing Los Angeles Under a Consent Decree: The Dynamics of Change at the LAPD*, Harvard Kennedy School Program in Criminal Justice Policy and Management (May 2009), p. 32. *Available at* http://assets.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf. Furthermore, both Washington D.C. and Pittsburgh— cities whose police departments implemented use of force reforms— have seen *declines* in crime rates, particularly violent crime. (emphasis added). *See* Chanin, Joshua M., *Examining the Sustainability of Pattern or Practice Police Misconduct Reform*, 18 Police Quarterly 163 at 172, 177 (2015). Another example is Cincinnati, whose police department also implemented significant reforms to its use of force policies and practices, leading to a 46% reduction in use of force incidents, but whose crime rates have remained relatively stable. *Id*. at 180. According to the Seattle Police Monitor, "an analysis of [Seattle Police Department] crime data and use of force data lead to the conclusion that the decreases in force that have occurred over time have not been associated with increases in crime**."** Seattle Police Monitor**,** *Ninth Systemic Assessment: Use of Force* (April 2017), p. 7. *Available at* https://static1.squarespace.com/static/5425b9f0e4b0d66352331e0e/t/58e6a753ff7c50ebbad126f8/1491511130661/Ninth+Systemic+Assessment--Use+of+Force--FINAL.pdf.

are, or are not, reflected in action. DOJ was able to observe how SPD's systems are currently functioning, both in terms of positive practices, and areas for improvement. We thank SPD for their exceptional openness and cooperation. The level of access and cooperation SPD provided our team informed our understandings immeasurably.

Throughout the assessment, DOJ has received the full cooperation and assistance of SPD and the City of Sacramento. We interviewed city leaders and officers throughout SPD's command structure and met with the leadership of the Sacramento Police Association, which represents all sworn SPD officers and sergeants.

Police exist to protect and serve the community. As such, an accurate assessment of SPD practices would not be complete without perspectives from the community. During the course of this review, DOJ was grateful to have had the opportunity to meet with a variety of stakeholders from different neighborhoods and sectors of the diverse Sacramento community, including community-based organizations, residents, and advocates. We thank everyone for sharing their experiences and insights with us.

SCOPE OF REPORT

This report discusses the findings and recommendations of DOJ's assessment of SPD's Use of Force related policies, training, and practices. The purpose of this assessment—which is entirely separate from the concurrent criminal investigation—is to provide the SPD with recommendations grounded in evidence and promising practices from around the country to help guide the reform efforts it has independently committed to pursue. In conducting the assessment, DOJ was assisted by nationally recognized law enforcement leaders and experts with deep experience on the issues evaluated.

DOJ's assessment and recommendations address the following six areas:

- Use of Force Policies
- Use of Force Reporting and Investigation
- Use of Force Training
- Officer-Involved Shooting Incident Review
- Personnel Complaint Procedures
- Community Engagement and Transparency.

APPROACH

Our recommendations to SPD in each section of this report are rooted in evidence-based practices, best practices, and promising practices from around the country. Evidence-based practices are methods, policies, or strategies that have been scientifically tested and measured, and shown to have positive results. Best practices are methods, policies, or strategies that may not have been scientifically evaluated but nonetheless have shown positive results over time and are generally accepted by experts. Promising practices are methods, policies, or strategies that are newer and thus may not have been scientifically tested or have outcomes over a long period of time, but nevertheless have yielded positive results for agencies utilizing them. In many instances, evidence-based practices, best practices, and promising practices may provide guidance or impose requirements or limitations that go beyond minimal standards required by law.

The law enforcement research field is innovating and evolving. In time, some promising practices may become best practices or evidence-based practices. Some current evidence-based practices or best practices may be replaced with approaches that are shown to be more effective. This is why it is critical for departments to stay abreast of developments in the field and continually evaluate what works best for their community.

Appendix A of this report provides a review of available research including a bibliography. This research, in addition to the citations discussed in the report, provide support for the recommendations made to SPD in each of the areas reviewed. The appendix also provides research recommendations to assist SPD in its ongoing efforts to ensure that its policies, procedures, and training are as effective as possible.

Where our recommendations cite the policies of other departments as exemplars, we do so for reference and illustration only—not because such policies are exhaustive. In any policy, there is likely room for improvement or refinement. Additionally, the citation of a particular department's policy in one area is not necessarily an endorsement of the particular department or its approach in another concept or area.

In assessing SPD's policies, practices, procedures, incidents, and training related to use of force, DOJ relied on applicable state and federal law, the insights and counsel of major police officer and community organizations, recognized and emerging best and promising practices and model policies, and relevant research. DOJ's team also benefited greatly from the collaborative attitude and approach that SPD leadership and rank and file demonstrated during the course of this review.

USE OF FORCE POLICIES

Written policies and procedures are the primary means by which a police department communicates its values, protocols, and standards to its officers. Policies can also educate the communities they serve by providing information that generally predicts and explains officer conduct. In the course of its review, DOJ assessed Sacramento Police Department policies related to use of force, including: General Order (GO) 580.02—Use of Force; GO 580.03—Discharge of Firearm; GO 580.10—Use of Conducted Energy Device; 580.12—Less Lethal System; GO 580.13—Foot Pursuits; GO 580.14—Use of Canines; GO 580.17—Use of Long Range Acoustical Device; RM 580.08—Baton Manual; and RM 580.09—Carotid Control Hold Manual. The evaluation of these policies was anchored in two principles: use of force-related policies must be sufficiently clear and comprehensive to enable officers to engage in both lawful and effective policing practices, and they must effectively protect officers and community members from harm.

PROMISING PRACTICES

DOJ identified several areas where SPD policies excel. For example, SPD's general Use of Force policies enshrine several necessary concepts that reflect best practices, including elements that work towards reducing the need for force. Across the country, a number of use of force incidents grow out of situations in which law enforcement officers unsuccessfully attempt to gain voluntary compliance through verbal commands. In recognition of this, SPD's general Use of Force policy requires its officers to consider the ability of certain individuals to immediately or effectively comply with police commands before using deadly force. (GO 580.02 at 1.) The policy cites intoxicants, medical conditions, or language and cultural barriers as factors that should be considered in evaluating the level of subject compliance prior to the use of force. (*Id.*) By urging caution in these instances, the policy appropriately works to limit unnecessary applications of force.

We also noted the comprehensiveness of the Department's Conducted Energy Device (CED or taser) policy. GO 580.10 provides specific guidance on how to carry and use a CED, including a requirement that, whenever possible, a verbal warning be issued before its use. (GO 580.14 at 3.) The policy also provides an extensive list of situations when CEDs are likely to be effective. (*Id.* at 2.) By providing concrete guidance and scenarios, the policy serves as an important safeguard against unnecessary and ineffective deployments.

SPD policies also benefit from ongoing reflective efforts to improve and expand them. For example, during the course of DOJ's review, SPD's Use of Force Committee updated its general Use of Force policy and also proactively created and implemented a foot pursuit policy (GO 580.13.) Several high-profile use of force incidents within Sacramento have taken place during or immediately following a foot pursuit, for which SPD, like many other police departments across the country, had no written guidance. Now GO 580.13 identifies instances in which a foot pursuit may be warranted and factors to consider before initiating one—including whether "the risk of pursuing outweighs the need for apprehension." (GO 580.13 at 1.) This requirement reflects a commendable effort to avoid unnecessary risk of injury to officers and members of the community.

Finally, SPD also requires its officers to intervene if they witness an excessive use of force. Such policies are exemplary because they instill institutional values in each officer and create a decentralized and effective method of accountability. By calling on each officer to assess the conduct of their peers, and by empowering them to act, SPD is clearly emphasizing the importance of the appropriate use of force to both its rank and file and the community.

SPD should continue to work with its community to further identify new or enhanced policies that should be considered.

RECOMMENDATIONS FOR IMPROVEMENT

Our review identified several areas for improvement. Generally, SPD's use of force-related policies are less comprehensive and specific than those of other police departments throughout the country. For example, SPD policies currently lack sufficient detail to provide sworn personnel with effective guidance on de-escalation techniques and when and how to employ varying kinds of force.

Some of the policies authorize or allow officers to employ use of force techniques or strategies that are unjustifiably high-risk in situations that may not otherwise justify potentially lethal force, such as carotid restraints and other actions that are designed to, or may potentially, cut off the flow of blood or oxygen to the head and other areas of the body. Additionally, while SPD requires officers to intervene if they see other officers using excessive force, SPD policies do not currently require officers who observe violations of a Use of Force policy to report such instances to Internal Affairs. These and other preliminary findings, and recommendations tailored to address them, are detailed below.

According to our expert consultants, rank and file law enforcement officers throughout the country routinely report that they want more specific policy guidance so that they can understand what is expected of them. Comprehensive and detailed use of force-related policies that concretely communicate what officers can and cannot do enable officers to effectively and safely perform their duties, increase a sense of fairness within police departments, and help the community better understand what to expect from their police. We believe the following recommendations will help SPD achieve these benefits.

1. Recommendation: SPD's general Use of Force policy (GO 580.02) should more clearly define and describe to officers when force is and is not authorized.

SPD's use of force-related policies reflect current best practices in certain aspects, but they provide far less detail than some departmental policies and, as a result, omit some important topics and cover others in less detail than would be beneficial.[23] After introductory material and definitions, and excluding force reporting procedures, SPD's core Use of Force policy is approximately one-half page in length.

SPD's general Use of Force policy states that "[o]fficers shall use only that amount of force necessary under the circumstance presented that the officer reasonably believes is required." (GO 580.02 at 1.) This language tracks California state law, but as the Police Executive Research Forum (PERF) has observed, federal and state law "outlines broad principles regarding what police officers *can legally do* in possible use of force situations, but does not provide specific guidance on what officers *should do*."[24] Indeed, "police agencies are always within their authority to adopt new policies … that they consider best practices in the policing profession, even if the new policies are not specifically required by court precedents."[25]

SPD's policy, which is overly reliant on the minimal, applicable legal standard, is too general to provide meaningful guidance to officers about what they should and should not do in the field when it comes to using force.[26] The remaining recommendations in this section of the report discuss some of the practices that have worked for other agencies in providing officers more guidance regarding use of force.

2. Recommendation: SPD should better define the applicable legal standard of objective reasonableness.

The use of force by police officers in the course of an arrest, investigatory stop, or other seizure is governed by the Fourth Amendment of the U.S. Constitution. (*Graham v. Connor* (1989) 490 U.S. 386, 394-95.) Courts analyze claims of excessive force, deadly or otherwise, under an "objective reasonableness" standard. (*Graham*, 490 U.S. at 394.)

In determining whether the use of force in a particular incident was objectively reasonable, courts consider the "totality of the circumstances," including the severity of the crime at issue; whether the subject presents an immediate safety threat to the officers or others; and whether the subject is actively resisting or attempting to evade arrest. (*Id.* at 394-96.) The reasonableness

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[23] *See e.g.* San Francisco Police Department General Order 5.01 Use of Force (December 21, 2016). *Available at* https://sanfranciscopolice.org/sites/default/files/Documents/PoliceDocuments/DepartmentGeneralOrders/DGO%205.01%20Use%20of%20Force%20%28Rev.%2012-21-16%29_0.pdf. Oakland Police Department Manual, General Order K-3, Use of Force (October 16, 2014). *Available at* http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak053209.pdf.

[24] Police Executive Research Forum, *Guiding Principles on Use of Force* (March 2016), p. 15. *Available at* https://www.policeforum.org/assets/30%20guiding%20principles.pdf.

[25] *Id.* at 17.

[26] *See* Appendix A, pp. 2-5 (describing research indicating use of force policies that provide more detailed restrictions on officer conduct lead to decreased rates of police shootings and use of force incidents, but not increases in officer or civilian injury.)

inquiry is objective, to be determined "in light of the facts and circumstances confronting [the officers], without regard to their underlying intent or motivation." (*Id.)* California state law encapsulates this requirement, allowing officers to use "reasonable force" to affect arrest, prevent escape, or overcome resistance. (Pen. Code, § 835, subd. (a).)

SPD policy should provide clearer guidance on what is reasonable. GO 580.02 addresses reasonableness in the preliminary policy statement, indicating that, "when using force, officers shall continuously reassess the perceived threat to select the reasonable use of force response." (GO 580.02 at 1.) Although this language is important in conveying necessity and proportionality in using force, it does not adequately explain the *Graham* or Penal Code standard.

SPD should revise its Use of Force policy to describe in detail, the obligations and parameters that relate to objective reasonableness. It should also include a list of factors that officers should consider in determining whether or not a potential use of force is reasonable in circumstances they encounter. As an example, the Las Vegas Metropolitan Police Department[27] defines a "reasonable" use of force by detailing factors that track applicable law, including: the severity of the crime at issue, whether the subject poses an immediate threat, proximity or access of weapons to the subject, the influence of drugs/alcohol or the mental capacity of the subject, and other factors.[28] SPD should amend its policies to similarly detail such factors.[29]

Furthermore, we recommend that SPD revise its policy to clarify that the reasonableness inquiry is governed by an objective, rather than subjective, standard. As currently drafted, the policy risks misguiding officers on the core concept of objective reasonableness. GO 580.03 states, "Justification for the use of deadly force shall be limited to what reasonably appears to be the facts known or perceived by the officer at the time. Facts unknown to an officer shall not be considered in later determining whether the shooting was justified." (GO 580.03 at 1.)

Graham affirms that the "reasonableness inquiry … is an objective one." (*Graham*, 490 U.S. at 396.) Thus, the inquiry does not concern whether the particular officer believed his conduct was necessary in order to respond to a perceived threat but rather the conduct is judged "from the perspective of a reasonable officer on the scene." (*Id.* at 396.)[30] The proper focus is whether the officer's actions were congruent with a reasonable officer viewing the incident from the same perspective and with the same knowledge of the attendant circumstances.

Accordingly, SPD policy should be modified to clarify that the reference to the "perception" of its officers refers to the officer's observations and knowledge prior to the use of force, and the

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[27] As noted above, the citation of a particular department's policy in this report in one area does not necessarily endorse its treatment of another concept or area.

[28] Las Vegas Metropolitan Police Department, Use of Force Policy, Section 6/002.00. *Available at* https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf.

[29] *See also* Los Angeles Police Department, Use of Force Policy, Section 556.10. *Available at* http://www.lapdonline.org/lapd_manual/volume_1.htm#556; Seattle Police Department Manual, Section 8.200: Using Force (September 1, 2015). *Available at* https://www.seattle.gov/police-manual/title-8---use-of-force/8200---using-force.

[30] *See also Wilkinson v. Torres*, 610 F.3d 546 (9th Cir. 2010).

resulting inquiry should be whether the officer behaved as an objectively reasonable officer would have when faced with the same circumstances.

3. Recommendation: SPD's general policy statement in its Use of Force policy should more expressly connect the sanctity of human life with use of force.

SPD should be credited for including in GO 580.02's policy statement, that it is SPD's policy "that officers value and preserve the sanctity of human life at all times." (*Id.* at 1.) However, this general statement is not connected to the more particular force-specific guidance that follows. Similarly, the Discharge of Firearms policy (GO 580.03) references the sanctity of life, but places it in a standalone "preamble" section before a separate "policy" section provides a general statement on using firearms.

SPD should link the affirmation of the sanctity of human life with the use of force principles of reasonableness, proportionality, and de-escalation—making it clear that the commitment to recognizing the sanctity of life is what drives the specifics of the policy. Examples of policy statements which more firmly connect the concepts of force and the sanctity of life include the Las Vegas Police Department's statement, which provides as follows: "[I]t is the policy of this department that officers hold the highest regard for the dignity and liberty of all persons, and place minimal reliance upon the use of force. The department respects the value of every human life and that the application of deadly force is a measure to be employed in the most extreme circumstances."[31] The Philadelphia and New Orleans Police Departments' policies provide additional examples of policy statements that effectively marry these two concepts.[32]

4. Recommendation: The Use of Force policy should better define and explain the requirement that force be used only when necessary.

SPD policy currently provides that "[O]fficers shall use only that amount of force necessary under the circumstances presented that the officer reasonably believes is required." (GO 580.02.) However, the concept of necessity is not described, defined, or explained in a specific or comprehensive way. For example, the Cleveland Division of Police requires that officers "use force only as necessary, meaning only when no reasonably effective alternative to the use of

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[31] Las Vegas Metropolitan Police Department, Use of Force Policy, p. 1149. *Available at* https://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad92b57eb8d0f11460ead/1452988719385/Las+Vegas+Use+of+Force+Policy.pdf.

[32] *See e.g.* Philadelphia Police Department Policy, Directive 10.1, Use of Force Policy p. 1 (rev. January 30, 2017) ("It is the policy of the Philadelphia Police Department, that officers hold the highest regard for the sanctity of human life, dignity, and liberty of all persons. The application of deadly force is a measure to be employed only in the most extreme circumstances and all lesser means of force have failed or could not be reasonably employed.") *Available at* https://www.phillypolice.com/assets/directives/D10.1.pdf; *see also* New Orleans Police Department Operations Manual, Use of Force Policy, Chapter 1.3, p. 5 (April 1, 2018) ("The policy of the New Orleans Police Department is to value and preserve human life when using lawful authority to use force. Therefore, officers of the New Orleans Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.") *Available at* https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/.

force appears to exist."[33] Similarly, the Seattle Police Department requires its officers to "use physical force only when no reasonably effective alternative appears to exist."[34]

5. Recommendation: SPD should refine and expand its treatment of de-escalation in its core force policy.

Law enforcement agencies across the country are increasingly emphasizing the strategic use of de-escalation tactics, which are actions that are aimed at stabilizing encounters between police and individuals in a manner that reduces any immediate threat so that "more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary."[35] De-escalation can involve verbal warnings, persuasion, tactical positioning, and other approaches—all with the goal of securing both officer and civilian safety, without impeding the effective use of legal and necessary force. (*Id.*)

The introductory section of SPD's general Use of Force policy (GO 580.02) provides that officers "are expected to use de-escalation techniques when reasonably possible and without increasing the risk of harm to officers or others." (GO 580.02 at 2.) The policy also states that, "officers should attempt to de-escalate situations … when reasonable under the totality of the circumstances and where it may be accomplished without increasing the risk of harm to officers or others." (*Id.*)

First, SPD policy should make de-escalation an affirmative duty, as opposed to what officers "are expected to do," or "should do," but instead something officers *must* or *shall do*. Current best practices reflect a clear trend towards making de-escalation an affirmative duty rather than a suggestion. The International Association of Chiefs of Police (IACP), an organization that seeks to develop, identify, and spread effective policing practices, developed and supports a model Use of Force policy that states, "An officer *shall* use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training wherever possible and appropriate before resorting to force and to reduce the need for force."[36] Similarly, the New Orleans Police Department states that "[w]hen feasible based on the circumstances, officers will use de-escalation techniques to avoid or reduce the need for the use of force."[37] By using words like "shall" or "will," these policies require and reinforce specific desired conduct.[38] We recommend SPD communicate to its officers that, whenever possible, an attempt to de-escalate is a step that must precede any and all uses of force.

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[33] Cleveland Division of Police, General Police Orders, Use of Force: General, p. 1. *Available at* http://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018General.pdf.
[34] Seattle Police Department Manual, *supra* note 29.
[35] International Association of Chiefs of Police, *National Consensus Policy and Discussion Paper on the Use of Force*, pg. 2. *Available at* https://www.theiacp.org/sites/default/files/2018-08/National_Consensus_Policy_On_Use_Of_Force.pdf.
[36] *Id.* at 3.
[37] New Orleans Police Department Operations Manual, Chapter 1.3 Use of Force (April 1, 2018). *Available at* https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/.
[38] *See e.g.* Minneapolis Police Department Policies and Procedures Manual, Section 5-300: Use of Force, 5300-4 (rev. July 28, 2016). *Available at* http://www.minneapolismn.gov/police/policy/mpdpolicy_5-300_5-300.

Second, SPD should consider developing a standalone de-escalation policy (separate from their Use of Force policy) to emphasize that the duty to de-escalate is applicable across all incidents and officer interactions, regardless of whether the incident specifically involves force. Such a policy could describe the range of de-escalation techniques and strategies, such as the use of tactical repositioning, strategic communication skills, and using cover and concealment.

Finally, SPD should tie de-escalation directly to the principle that officers should constantly reassess circumstances they face and aim to adjust their responses to the nature of the circumstances they confront.

6. Recommendation: SPD policy should affirm the importance of proportionality.

In keeping with principles of de-escalation, and of limiting the use of force to instances in which it is reasonable and necessary, SPD should more clearly require that its officers only use force that is consistent with the threat that particular individuals present. Most often referred to as "proportionality," such an approach requires that the use of force mirror the situation at issue, ensuring that the more immediate the threat of harm, the greater the level of force that may be used, and vice versa.

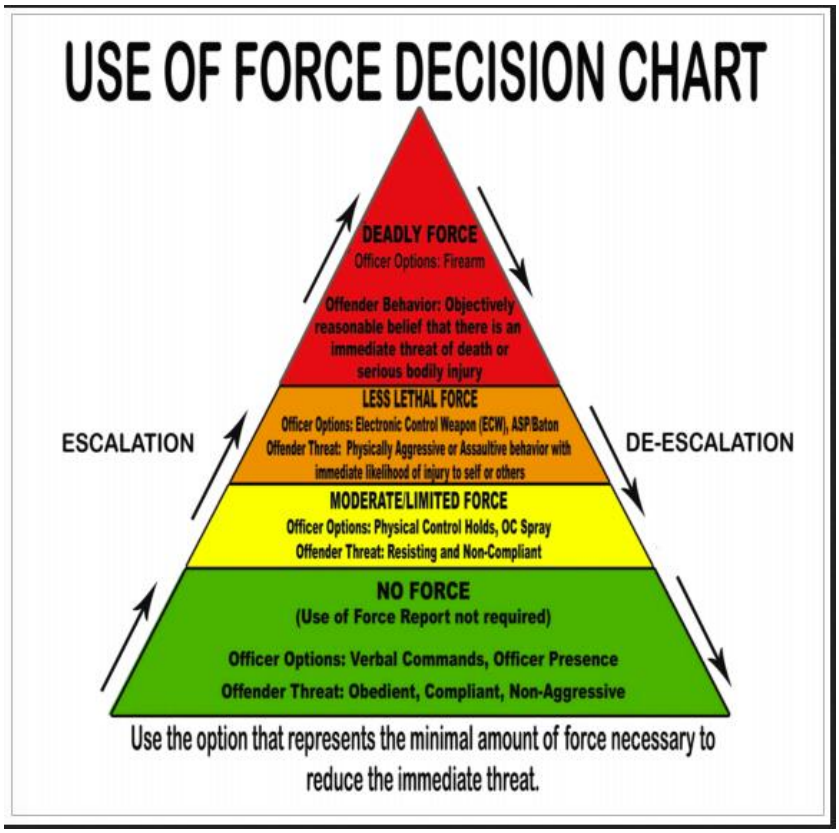
Over half of the country's fifty largest police departments incorporate some type of proportionality requirement within their Use of Force policies.[39] SPD policy currently requires that officers use the "amount of force necessary under the circumstances presented…." (GO 580.02 at 2.) While such language implicitly incorporates a proportionality requirement, SPD should provide express guidance on this concept to ensure its officers understand the relationship that should exist between the force they use and the threat presented in a particular situation.

Understanding that such guidance can take many forms, SPD should consider language used by other departments. For example, the Seattle Police Department states that officers use force that is "proportional to the threat or resistance of the subject…[and that] [t]he level of force applied must reflect the totality of the circumstances surrounding the situation…."[40] The New York Police Department requires that its officers use only the "minimum necessary force."[41] Both approaches emphasize that if an officer uses force, then the force should directly reflect the nature of the threat.[42]

Some departments have adopted a use of force continuum, spectrum, or matrix, which typically takes the form of a graphical representation or flow chart categorizing various force responses

[39] Brandon L. Garrett & Seth W. Stoughton, "A Tactical Fourth Amendment," 103 V. L. Rev. 211 (2017).
[40] Seattle Police Department Manual, Section 8.000: Use of Force Core Principles. *Available at* https://www.seattle.gov/police-manual/title-8---use-of-force/8000---use-of-force-core-principles.
[41] New York Police Department, General Regulations, Procedure No. 203-11: Use of Force, p. 1 (Aug. 1, 2013), http://www.nyc.gov/html/oignypd/assets/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf.
[42] *See* Appendix A, pp. 2-3 (after Seattle Police Department's revisions to its Use of Force policies as a result of a United States Justice Department Consent Decree, Seattle PD had an overall decrease in use of force incidents, and a court-appointed monitor found its use of force incidents overall to be overwhelmingly necessary and appropriate.)

consistent with various levels of threat. The Philadelphia Police Department's "Use of Force Decision Chart" is one example:[43]



These graphical representations of force decision-making, which emphasize that an officer's response to a situation should reflect the nature of the threat, make the concept of when force is, and is not, appropriate, more understandable. They also highlight the fluidity of the decision-making process, i.e., that the nature of the threat, and the force necessary to respond to it, may become more or less severe during the course of an interaction.

SPD should be aware, however, that police organizations such as the Police Executive Research Forum have cautioned against the reliance on rigid force matrices or continuums because such models can cause officers to think narrowly, "If presented with weapon A, respond with weapon B. And if a particular response is ineffective, move up to the next higher response on the continuum…[A]ssessing a situation and considering options as circumstances change is not a steady march to higher levels of force if lower force options prove ineffective. Rather, it entails finding the most effective and safest response that is proportional to the threat."[44] Such a response could include, for example, calling additional resources, taking cover, rapport-building, etc.

[43] *See* Philadelphia Police Department, Directive 10.3, Use of Less-Lethal Force, p. 5 (September 18, 2015). *Available at* https://www.phillypolice.com/accountability/.
[44] *Guiding Principles, supra* note 24 at 19-20.

Whether through specific policy language or a force decision flowchart, SPD should explore how it can best incorporate the concept of proportionality into its policy.

7. Recommendation: Consistent with the core concepts of de-escalation, necessity, and proportionality, SPD should consider expressly requiring that officers exhaust all other means reasonably available to them under the circumstances before using deadly force.

SPD should require that, whenever possible, its officers exhaust all available alternatives before using deadly force. The Philadelphia Police Department guides its officers by stating that "[t]he application of deadly force is a measure to be employed only in the most **extreme circumstances** and all lesser means of force have failed or could not be reasonably employed." (emphasis in original).[45] By situating the use of deadly force as an option that follows the consideration of all other types of force, Philadelphia communicates a clear expectation to its officers. SPD should follow suit and take a step forward in its ongoing efforts to rely on deadly force only when necessary.

8. Recommendation: In its general Use of Force policy, SPD should require that, when feasible under the circumstances, officers provide verbal warnings to subjects before using force, whether deadly or less-lethal force.

When feasible under the circumstances, officers should provide subjects with an opportunity to comply before using force. Indeed, the Supreme Court has predicated the use of deadly force on fleeing felony suspects on, "where feasible, some warning ha[ving] been given," by the officer."[46] This is consistent with the United Nations' Basic Principles on the Use of Force and Firearms, which states, "[W]hen law enforcement is faced with an imminent threat of death or serious bodily injury, officers must … give clear warning," unless doing so "would unduly place the law enforcement officers at risk," would create a risk of death or serious harm to others, or would be "clearly inappropriate or pointless in the circumstances."[47]

SPD's Discharge of Firearm policy (GO 580.03), CED policy (GO 580.10) and Canine policy (GO 580.14) all include reference to verbal warnings, but SPD should extend the verbal warning admonition to address all uses of force, including non-deadly force, by including it in its general Use of Force policy. For example, the Cleveland Division of Police's Use of Force policy states, "[w]here feasible, and to do so would not increase the danger to officers or others, officers shall issue a verbal warning to submit to their authority prior to the use of force."[48]

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[45] Philadelphia Police Department, Directive 10.1 (Use of Force – Involving Discharge of Firearms), at 1.A. *Available a*t https://phillypolice.com/assets/directives/D10.1.pdf.
[46] *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985).
[47] Amnesty International, *Deadly Force: Police Use of Lethal Force in the United States* (2015) p. 23 (summarizing *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27 – September 7, 1990). *Available at* https://www.amnestyusa.org/wp-content/uploads/2017/04/aiusa_deadlyforcereportjune2015.pdf.
[48] Cleveland Division of Police, Use of Force – General (rev. January 1, 2018), p. 4. *Available at* http://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018General.pdf. *See also* Northampton

SPD should also strengthen its existing policies with regard to verbal warnings by consistently requiring that officers provide verbal warnings, unless doing so would compromise the safety of officers or others. While SPD's CED and Canine policies include this requirement, the department's Discharge of Firearm Policy does not ("verbal warning *should* precede the use of deadly force where feasible and when it will not increase the risk of harm to officers or others). We recommend SPD require a verbal warning when safe and feasible. For example, the San Francisco Police Department's policy states, "If feasible, and if doing so would not increase the danger to the officer or others, an officer *shall* give a verbal warning to submit to the authority of the officer before discharging a firearm or using other deadly force."[49] (emphasis added.)

9. Recommendation: SPD should amend its policy to provide more guidance on foot pursuits.

DOJ's ongoing review of use of force and officer-involved shooting incidents has identified several instances in which a foot pursuit preceded a serious use of force. As discussed above, however, SPD has recently taken a necessary and laudable step by providing extensive guidance to officers, detailing several factors that they must consider before initiating, continuing, and terminating foot pursuits. (*Id.* at 1-2.) The new policy also details responsibilities for officers, supervisors, and other involved parties, creating a framework for tactical collaboration in what can often be dynamic situations. (*Id.*)

In reviewing the new foot pursuit policy, we found several areas that should be clarified and improved. First, SPD should provide clear and succinct language that details when officers may initiate a foot pursuit. The policy currently states that "[a]n officer may pursue suspects only when he or she reasonably believes the suspect has committed an act that would justify a stop investigative detention or arrest." (*Id.* at 1.) We recommend modifying this language so that it clearly cites the requirement that an officer have reasonable suspicion that a crime has taken place before initiating a pursuit. Further, the policy should go beyond legal mandates and state that the mere act of running may not constitute a sufficient basis for initiating a foot pursuit.

Second, SPD should also expand the list of factors it requires officers to consider before initiating, continuing, or terminating a foot pursuit. SPD's policy cites the need to "continuously assess and evaluate whether the need for apprehension justifies" the risks inherent in a foot pursuit and provides several relevant factors for officers to consider. (*Id.* at 1.) SPD should amend the factors listed to include the "possibility of apprehension at a later time," a critical consideration when determining whether a foot pursuit should be initiated. If an individual can safely be apprehended at a later time, without necessitating a foot pursuit, then such an option should be seriously considered.

(Mass.) Police Department, Administration and Operations Manual, Section O101 Police Use of Force, p. 3 (December 1, 1998). *Available at* https://www.northamptonpd.com/administration/policies-and-procedures.html ("When feasible, an officer will allow the subject an opportunity to comply with the officer's verbal commands. A verbal warning is not required in circumstances where the officer has to make split-second decisions, or if the officer reasonably believes that issuing the warning would place the safety of the officer or others in jeopardy.")

[49] San Francisco Police Department, General Order 5.01 Use of Force, p. 13 (December 21, 2016). *Available at* https://sanfranciscopolice.org/sites/default/files/Documents/PoliceDocuments/DepartmentGeneralOrders/DGO%205.01%20Use%20of%20Force%20%28Rev.%2012-21-16%29.pdf.

Third, SPD's foot pursuit policy should be modified to be consistent with the Department's body worn camera guidance. The foot pursuit policy currently requires officers to activate their body worn camera "as soon as practical" following the initiation of a foot pursuit. (*Id.* at 2.) This requirement is unclear and may lead to an unnecessary failure to activate a body worn camera. SPD should modify this language so that it mirrors its general policy on body worn cameras, which requires that officers activate their body-worn camera immediately at the commencement of any enforcement or investigative activity, unless activation "is not feasible due to an immediate risk to the safety of the employee or others." (GO 525.07 at 2.) By adopting this language, SPD will ensure consistency across its policies and provide clear guidance to its officers.

10. Recommendation: SPD policy should specifically prohibit various problematic types of force.

Effective Use of Force policies provide officers with boundaries that delineate acceptable and unacceptable behavior.[50] Consistent with the recommendation to provide more specificity in its policy with respect to use of force, SPD should join the ranks of departments that explicitly prohibit or significantly limit certain high-risk uses of force. Adopting more specific guidelines such as the ones that follow will provide officers with clarity in what they should and should not do in fast-moving situations, rather than needing to assess, in the moment, whether a particular tactic or technique would be reasonable.

10.1 Recommendation: SPD should continue to prohibit chokeholds, and further prohibit carotid restraints, and other maneuvers which are designed to, or may foreseeably result in, cutting off blood or oxygen to a subject's head.

SPD's policy currently only prohibits the use of force on "a subject's head or neck area in an effort to prevent individuals from swallowing or attempting to swallow evidence." (GO 580.02 at 2.) This prohibition should be extended to all situations. Specifically, SPD should restrict all physical maneuvers, including carotid restraints, that are designed to or may foreseeably cut off blood or oxygen to an individual's head. Similarly situated departments, including those that serve San Francisco, Miami, New York, Philadelphia, and Washington D.C., prohibit choke or neck holds such as carotid restraints.[51] By prohibiting or significantly limiting these kinds of force, SPD may be able to decrease the likelihood of unnecessary and accidental serious bodily injuries. Reasonable exceptions may be appropriate for rare circumstances in which deadly force would be justified and no better, safer force option is available.[52]

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[50] *See* Appendix A, pp. 2-3.

[51] *See e.g.* Miami Police Department, Use of Force Policy, Section 21.4.1.20 ("Police officers are prohibited from utilizing the Lateral Vascular Neck Restraint (LVNR), choke hold, neck hold, and/or any other restraint that restricts free movement of the neck or head."). *Available at* https://static1.squarespace.com/static/56996151cbced68b170389f4/t/57584d061bbee036509d71ea/1465404695957/Miami+UOF.pdf.

[52] SPD may want to consider language similar to its treatment of kicks. For example, an SPD training bulletin from 2010 on use of force guidelines for hand strikes, leg sweeps, and distraction techniques, states "A leg sweep shall not be used when a subject is kneeling and is not considered a transition to a kick. A kick is not a Department

10.2 Recommendation: SPD should prohibit the use of techniques and/or transport that involve a substantial risk of positional asphyxia.

SPD's Use of Force policy should specifically preclude officers from situating subjects in a manner that heightens the risk of positional asphyxia—or "death as a result of body position," typically a face-down body position, "that interferes with one's ability to breathe."[53] This policy should apply to all force incidents but is particularly important after the deployment of CEDs or OC spray. For example, New York Police Department calls on officers to position individuals "so as to promote free breathing," and instructs officers not to maintain or transport individuals in a face down position.[54] SPD should provide similar guidance to its officers, along with information regarding how to ensure that arrest and detention procedures do not compress an individual's airway and reduce the likelihood that an individual will be able to breathe.

10.3 Recommendation: SPD should prohibit shooting *at* or *from* moving vehicles.

SPD's current policy sets, as the general rule, that officers cannot discharge their firearms "*at* a moving or fleeing vehicle." (GO 580.03 at 1.) (emphasis added.) This is strong guidance as stands but can be bolstered in a few ways.

First, exceptions in the policy threaten to swallow the rule. Specifically, the policy allows officers to fire at a moving vehicle when, "[T]he driver has used or is attempting to use the vehicle as a means to cause injury or death to the officer or another person." (*Id.* at 1.) The policy, however, also requires officers to "move out of the path of [the] approaching vehicle instead of discharging their firearm." (*Id.*) So in a situation where a subject is maneuvering towards an officer in a vehicle, the officer may be confused as to how to comply with policy—in other words, should the officer move out of the path of the vehicle, or, since the subject "has used … the vehicle" in that moment to drive towards the officer, is the officer justified in using deadly force? (*Id.*)

This language should be modified to clarify that, unless officers are confronting the exceptional circumstance in which the vehicle is actively being used to cause or effectuate a substantial risk of injury or death to officers or others, shooting at a moving vehicle is *not* permitted. The Los Angeles Police Department's policy, which cites "immediate peril" and situations in which there

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approved technique and may only be utilized as a last resort when other applications of force are not available and the officer faces great bodily injury." (SPD Roll Call Training Bulletin, "Use of Force Guidelines for Hand Strikes, Leg Sweeps and Distraction Techniques," February 3, 2010.)

[53] United States Department of Justice, Office of Justice Programs, National Law Enforcement Technology Center, Positional Asphyxia – Sudden Death, p. 1 (June 1995). *Available at* https://www.ncjrs.gov/pdffiles/posasph.pdf.

[54] *Police Use of Force in New York City: Findings and Recommendations on NYPD's Policies and Practices*, New York City Department of Investigation: Office of Inspector General for the NYPD, p. 66 (October 1, 2015). *Available at* http://www.nyc.gov/html/oignypd/assets/downloads/pdf/oig_nypd_use_of_force_report_-_oct_1_2015.pdf. (referencing New York Police Department, General Regulations, Procedure No. 203-11: Use of Force, p. 2 (August 1, 2013).

is "no reasonable or apparent means of escape" as potential exceptions, is instructive on this issue.[55]

Second, SPD should also modify its policy to ensure that its officers, barring very exceptional circumstances, do not shoot *from* moving vehicles. Shooting from moving vehicles is an extremely dangerous event that increases the likelihood of unnecessary collateral damage. In recognition of this extreme danger, the Los Angeles Police Department, the New Orleans Police Department, and the Las Vegas Metropolitan Department, among others, prohibit the practice.[56] SPD should follow suit, providing only for exceptions that require such actions to end an imminent threat to human life.

10.4 Recommendation: SPD should prohibit specific types of force that are rarely ever consistent with policy.

Some types of force are almost never objectively reasonable. SPD's Use of Force policy should specifically prohibit these. Detailed force policies that spell out what officers can, and cannot do, aid officers in meeting performance expectations, increase a sense of internal fairness and consistency, and help the community better understand what to expect from their interactions with police – while also potentially decreasing a department's overall use of force.[57] For example, the Cleveland Division of Police's Use of Force policy requires that, "[C]onsistent with the principles of necessity, proportionality, objective reasonableness, and de-escalation, officers shall not,"[58] among other things:

- Use force to subdue a subject who is not suspected of any criminal conduct, other than to protect an officer's or another person's safety, including individuals who are solely engaged in exercising their First Amendment rights.
- Use retaliatory force.
- Use force against subjects who only verbally confront officers and are not involved in criminal conduct, unless that confrontation poses a direct and immediate threat to the safety of the officer.
- Use force against subjects who are handcuffed or otherwise restrained, unless the subject is actively resisting and poses a direct threat to officers and/or themselves.

11. Recommendation: SPD should have policies governing each type of force instrument that it authorizes officers to carry.

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[55] Los Angeles Police Department, Use of Force Policy, Section 556.10. *Available at* http://www.lapdonline.org/lapd_manual/volume_1.htm#556.

[56] *Id. See also* New Orleans Police Department Operations Manual, Use of Force, Chapter 1.3, p. 10 (April 1, 2018). *Available at* https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/. Las Vegas Metropolitan Police Department, Use of Force Policy, Section 6/002.02, p. 23. *Available at* https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf.

[57] *See* Terrill, William, Paoline, Eugene A., Ingram, Jason, Final Technical Report Draft: Assessing Police Use of Force Policy and Outcomes, 35 Just. Quart. 193 (May 2011). *Available at* https://www.ncjrs.gov/pdffiles1/nij/grants/237794.pdf.

[58] Cleveland Division of Police, Use of Force – General (rev. January 1, 2018), p. 5. *Available at* http://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018General.pdf.

SPD's general Use of Force policy requires that officers "use techniques and equipment that are approved by the Department." (GO 580.02 at 2.) The Department's use of force-related policies effectively identify certain authorized force techniques. However, based on information provided by SPD, SPD does not provide its officers with an exclusive list of authorized use of force instruments, and it does not provide tailored guidance for all use of force instruments cited in its policies, including batons, chemical agents, and 40 MM launchers. (*Id.*) Each use of force instrument carries specific risks and special considerations, and therefore, merits specific policy guidance to ensure that officers safely and effectively deploy it.

SPD should modify its policies to address, in a manner consistent with best practices, each authorized use of force instrument. To do so, SPD should identify each authorized use of force instrument – including empty hand tactics—and provide specific instructions for each. In formulating these tailored policies, SPD should consider referencing the policy documents of the Las Vegas Metropolitan Police Department and Seattle Police Department, which provide specific descriptions and guidance for each authorized force instrument.[59] Accordingly, SPD should consider whether to have separate, stand-alone policies for each force instrument – or whether it should incorporate such particular instructions into its general Use of Force policy. Regardless of its approach, SPD's policies should be sufficiently descriptive and comprehensive to ensure its officers understand how to use each authorized use of force instrument.

LESS-LETHAL FORCE

11.1. Recommendation: SPD should expressly require that all officers carry, and be trained on, less-lethal instruments.

Equipping officers with less-lethal tools has been associated with a lower rate of injuries for both officers and civilians.[60] SPD's current CED policy requires all sworn, uniformed personnel to carry CEDs. (GO 580.10 at 2.) SPD, by policy, should also formally require officers to carry other less-lethal tools in addition to the CED--even if officers are already doing so customarily.

FIREARMS AND OTHER LETHAL FORCE

11.2. Recommendation: SPD should consider revising its firearms policy into a policy addressing the use of lethal force.

[59] Las Vegas Metropolitan Police Department, Use of Force Policy, Section 6/002.02, p. 8. *Available at* https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf; Seattle Police Department Manual, Section 8.300: Use of Force Tools (September 1, 2015) (providing specific guidance and expectations on the use of beanbag shotguns, canines, CEDs, firearms, impact weapons, OC spray, vehicle-related tactics, various specialty unit weaponry, hobble restrains, and neck and carotid restraints.) *Available at* https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools.

[60] McDonald, John, et. al, The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events, 99 Am.J.Pub.Health 2268 (2009)(concluding that "[i]ncidence of … injuries can be reduced dramatically when law enforcement agencies responsibly employ less-lethal weapons in lieu of physical force.").

Currently, SPD discusses the use of deadly force in its Discharge of Firearm policy (580.03). Because other force techniques and instruments—depending on the nature and circumstances of their use—may constitute lethal force, SPD should not limit the discussion of when the use of lethal force is authorized solely to the context of firearms. For example, the Oakland Police Department's Use of Force policy states, "[a]ny force that poses a substantial risk of causing death or serious bodily injury is considered lethal force," which may "include the use of the carotid restraint, an intentional strike to the head with an impact weapon, or intentional use of a vehicle to strike a suspect."[61] It further states that lethal force can be used "when the member objectively and reasonably believes that his/her life, or the life of another, is in immediate danger of death or serious bodily injury, based upon the totality of the facts known to the member at the time."[62]

11.3. Recommendation: SPD's general Use of Force policy and its Discharge of Firearms policy should better address issues involving exhibiting and pointing firearms.

SPD's policies should provide specific guidance on when to un-holster, draw, and exhibit firearms—and should ensure that these instances are reported. In recognition that "drawing or exhibiting a firearm may limit an officer's alternatives in controlling a situation, may create unnecessary anxiety on the part of the public, and may result in an unwarranted or unintentional discharge of the firearm,"[63] agencies such as the Seattle Police Department have implemented prohibitions on officers drawing or exhibiting a firearm unless "the officer has reasonable cause to believe it may be necessary for his or her own safety or for the safety of others." The Los Angeles Police Department and Las Vegas Metropolitan Police Departments have also implemented such language in their policies.[64]

SPD's definition of "force" should emphasize that pointing a firearm at someone is a seizure for purposes of the Fourth Amendment because a reasonable person would not feel free to leave in that situation.[65] As such, police departments nationwide from Oakland to Seattle to Cleveland consider pointing a firearm at an individual to constitute a reportable use of force.[66]

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[61] Oakland Police Department Manual, General Order K-3, Use of Force, pp. 3-4 (October 16, 2014). *Available at* http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak053209.pdf.
[62] *Id.*
[63] Seattle Police Department Manual, Section 8.300-POL-4, Use of Force – Firearms (September 1, 2015). *Available at* https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools#Firearms.
[64] Los Angeles Police Department Policy Manual, Use of Force, Section 556.80. *Available at* http://www.lapdonline.org/lapd_manual/volume 1. Las Vegas Metropolitan Police Department, Use of Force Policy, Section 6/002.02, p. 23. *Available at* https://www.lvmpd.com/en us/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf
[65] *See e.g.* Oakland Police Department Manual, General Order K-3, Use of Force Policy, p. 7 ("The pointing of a firearm at a person is a seizure and requires legal justification.") *Available at* http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak053209.pdf.
[66] *Id.* at 6. *See also* Seattle Police Department Manual, Section 8.300, Use of Force Tools, supra note 63; Cleveland Division of Police, Use of Force--General (rev. January 1, 2018), p. 5. *Available at* http://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018General.pdf.

11.4. Recommendation: SPD's firearms policy should include provisions that better ensure the safety of other officers and bystanders.

SPD's current firearms policy does not provide any guidance or warning about the risks of firearm discharges to other officers or bystanders who are positioned nearby. DOJ's review of officer-involved shootings noted several instances of firearm discharges by SPD officers that could have resulted in serious injury to bystanders. SPD should update its current firearms policy to reflect a clear warning about the risks of firearm discharge and guidance on how to mitigate unintended and unnecessary risks of serious injury. Accordingly, SPD's revised policy should require that officers consider their surroundings and potential risks to bystanders, to the extent reasonable under the circumstances, before discharging a firearm. As an example, the Detroit Police Department permits the use of deadly force only, in part, "when bystanders are not in jeopardy."[67]

CONDUCTED ENERGY DEVICES

11.5. Recommendation: SPD's Conducted Energy Device (CED) policy should limit use of the CED to three, standard five-second cycles, with individual cycles separately justified in use of force reporting.

DOJ identified SPD's policy on CEDs as the Department's most comprehensive use of force-related policy. Consistent with best practices, SPD prohibits the use of CEDs when the only justification is that the subject is fleeing, or if an individual is pregnant, a young child, or visibly frail. (GO 580.10 at 3.) The policy also currently requires that CEDs be carried in a manner that reduces accidental discharge, and that officers issue a warning before using them. (*Id.)* SPD can further improve its CED policy by providing further specific guidance on the acceptable modes and applications of CED.[68]

For example, SPD should require officers to justify (with specificity) the use of more than one, five-second, standard cycle of CED. The policy should prohibit the activation of more than one CED against a single subject at a particular time. Likewise, the policy should prohibit exposing a subject to more than three standard, five-second CED cycles.[69]

SPD policy should also require that officers re-assess and re-evaluate circumstances in between the activation of each standard, five-second cycle, and only use subsequent cycles if and when the use criteria are satisfied. This helps mitigate the risk of officers administering the subsequent cycles automatically or customarily.

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[67] Detroit Police Department Manual, Section 304.2-4.2: Deadly Force, p. 3 (August 6, 2014). *Available at* http://static1.squarespace.com/static/56996151cbced68b170389f4/t/57584dea22482e86c03111b3/1465404906983/DPD+Manual+Use+of+Force.pdf.

[68] *See* Appendix A, p. 2 (describing research on effect of greater restrictions in policy on usage of CEDs).

[69] Community Oriented Policing Services, U.S. Department of Justice and Police Executive Research Forum, *Electronic Control Weapons Guidelines* p. 20 (March 2011). *Available at* https://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapon%20guidelines%202011.pdf; *See also* Axon, Taser X3, X26 and M26 ECD Warnings, Instructions, and Information: Law Enforcement. *Available at* https://www.prisonlegalnews.org/media/publications/taser_law_enforcement_warnings_2010.pdf.

11.6. Recommendation: SPD should consider eliminating the use of CEDs in "drive stun" mode.

CEDs may be used in a number of ways. The primary way is in "cartridge" or "dart" mode, where the CED works to complete a perfect electrical loop and introduce electrical current that momentarily disrupts a subject's neuro-muscular system. The disruption is intended to provide an opportunity for the officer to get a subject under control. "Drive stun" mode, as described in SPD's current CED policy, involves "direct contact" of the CED to the subject "without darts," which causes pain, but does not temporarily incapacitate the subject. (GO 580.10 at 3.) For this reason, SPD should consider revising its CED policy to, at minimum, explicitly discourage or limit the use of "drive stun mode" as departments such as Las Vegas and Cleveland have done.[70]

11.7. Recommendation: SPD's policy should prohibit the use of a CED on handcuffed subjects.

Consistent with prior recommendations on prohibiting use of force on handcuffed or restrained individuals, SPD's CED policy should reinforce that CEDs should generally not be used on handcuffed subjects, "unless doing so is necessary to prevent them from causing serious bodily harm to themselves or others and if lesser attempts of control have been ineffective."[71]

CANINES

11.8. Recommendation: SPD should modify its canine-related policies so that its canines are deployed in a manner consistent with "find and bark" rather than "find and bite" approaches.

Canine units in law enforcement agencies are routinely deployed under one of two guiding strategies: "find and bark" vs. "find and bite." Under a find and bark, or "handler control" practice, a canine is trained and deployed to identify, find, and corner a suspect so that she or her can be apprehended. Find and bite generally refers to deployments that end in canine units biting a suspect, resulting in injuries that are potentially avoidable. As a result, in an effort to reduce unnecessary injuries, departments across the country are increasingly abandoning training methods and policies that lead to canine bites.

SPD's policies strongly suggest that SPD is employing a find and bite approach. The policies should be modified to emphasize the utility of find and bark deployments (handler control

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[70] *See* Las Vegas Metropolitan Police Department, Use of Force Policy, p. 1171. *Available at* https://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad92b57eb8d0f11460ead/1452988719385/Las+Vegas+Use+of+Force+Policy.pdf. *See also* Cleveland Division of Police, General Order 2.1.06, Taser – Conducted Electrical Weapon (CEW), p. 3 (March 22, 2013). *Available at* http://www.city.cleveland.oh.us/sites/default/files/forms_publications/GPO_Book11-24-15.pdf

[71] *See Electronic Control Weapon Guidelines*, *supra* note 69.

methodology), and to provide specific guidance on when canine handlers may direct their charges to bite.[72] Relevant trainings and guidance should be updated accordingly. ‘

12. Recommendation: SPD should more clearly articulate its requirement that officers render and/or request medical assistance when necessary following a use of force.

Current SPD policy details requirements regarding medical aid and assistance following use of force incidents in its general Use of Force policy (GO 580.02) which instructs officers to refer to GO 522.02, “when rendering emergency medical treatment or summoning medical assistance.” (GO 580.02 at 2.) However, departments are increasingly including much more specific policy requirements for officers relating to medical aid within the core Use of Force policy, understanding that subjects, bystanders, and officers carry a higher than typical risk of injury during a use of force encounter. For example, the Seattle Police Department’s policy states, “Following a use-of-force, officers shall render or request medical aid, if needed or if requested by anyone, as soon as reasonably possible.”[73]

Although SPD’s standalone policy governing medical care provides helpful guidance on how police should interact with other emergency medical personnel across a host of situations, its Use of Force policy should clarify that after a force incident, officers must provide or summon medical aid as soon as possible under the circumstances.

13. Recommendation: SPD should ensure that officers report potential misconduct related to force to Internal Affairs and/or a supervisor.

SPD policy currently provides than “[a]n officer who observes another employee use force that exceeds the degree of force permitted by law shall promptly report these observations to a supervisor.” (GO 580.02, § C(1)(a).) SPD should revise its policies to ensure that any officer who witnesses, or becomes aware of, *any potential misconduct with respect to the use of force* report this to a supervisor or Internal Affairs. The duty should not simply apply to instances in which an officer’s use of force violated the law, but should also extend to other potential violations of SPD’s Use of Force policy.

14. Recommendation: SPD policy should strengthen its requirement that officers intervene when they observe other officers violating its Use of Force policy.

SPD policy provides that “[a]any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so and without increasing the risk of harm to officers or others, intercede to

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[72] *See e.g.* Seattle Police Department Manual, Section 8.300-POL-2, Use of Force – Canine Deployment (September 1, 2015). *Available at* https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools#Canine%20Deployment.

[73] Seattle Police Department Manual, Section 8.200, Using Force (September 1, 2015). *Available at* https://www.seattle.gov/police-manual/title-8---use-of-force/8200---using-force. *See also* Philadelphia Police Department, Directive 10.2: Use of Moderate/Limited Force (September 18, 2015). *Available at* http://www.phillypolice.com/assets/directives/D10.2-UseOfModerateLimitedForce.pdf (“officers render appropriate medical aid and request further medical assistance, when necessary for the subject and any other inured individuals, as soon as it is safe to do so.”)

prevent the use of unreasonable force." (GO 580.02 at 2.) SPD also requires its officers to report any uses of force that exceed "the degree of force permitted by law" to a supervisor. (*Id.*) SPD deserves praise for both requirements, which serve to strengthen officer accountability. However, both requirements should be clarified and expanded to provide clearer guidance.

The use of force by SPD officers is governed *both* by applicable law and by applicable policies. The duty to intervene and report should therefore be anchored in SPD policies, which, as discussed above, should go beyond minimum legal requirements. Accordingly, officers should be required to intercede and report whenever a violation of the Use of Force policy is observed. Further, the requirement to report should be expanded from the current requirement that the officer report to a supervisor to require that officers notify SPD's Internal Affairs Division, which is tasked with investigating allegations of officer accountability. Doing so will ensure that such allegations are appropriately tracked and investigated. Departments including Denver, Newark, Raleigh, and Washington D.C., have policies that impose a duty to intervene beyond the minimum legal requirements and include mandated intervention for violations of department policy.[74]

USE OF FORCE REPORTING AND INVESTIGATION

Department policies on when officers may use certain types of force are instrumental in providing guidance to officers. Policies related to use of force reporting and the investigations and review process following a use of force incident are equally important in assuring compliance with policies, identifying both exceptional and deficient conduct, providing remedial training, and ensuring accountability for policy violations.

In order to assess SPD's systems of reporting, investigating and reviewing officers' use of force, DOJ spoke with SPD personnel including members of SPD's Professional Standards Unit and Homicide Unit, attended SPD training, and reviewed the following policies and procedures: General Order 580.02 (Use of Force), General Order 580.03 (Discharge of Firearm), Reference Manual 220.01 (Internal Investigation Manual), Internal Affairs Division Daily Procedures and Blue Team Instruction Manual and revisions to it (May 24, 2016, Memo on May 16, 2018).

DOJ compared SPD's written materials to evidence-based practices and best and promising use of force investigation and review practices of departments across the country. This review was conducted with an understanding that generally-accepted practices can deviate from what is in policy, and what is in policy is not necessarily reflective of what is occurring in the field. For observations and analysis of officer-involved shooting investigations, see *infra*. A sampling of

[74]*See e.g.* Newark Police Division, General Order 18-20: Use of Force (November 8, 2018), pp. 7-8. *Available at* https://docs.wixstatic.com/ugd/582c35_25e1670cb2c040069c4139f2ccae9974.pdf. Denver Police Department Operations Manual, Section 105.01: Use of Force (August 3, 2018), p. 4. *Available at* https://www.documentcloud.org/documents/4638695-Denver-Police-Department-Use-of-Force-Policy.html?embed=true&pdf=true&responsive=false&sidebar=false&text=true. Raleigh Police Department, Section 1108-1: Use of Force and Weapons, p. 2. *Available at* https://static1.squarespace.com/static/56996151cbced68b170389f4/t/569fa5b92399a3f3643c0a1a/1453303226559/Raleigh+Use+of+Force+Policy.pdf. District of Columbia Metropolitan Police, General Order 901-07: Use of Force (November 3, 2017), p. 8. *Available at* https://go.mpdconline.com/GO/GO_901_07.pdf.

incident-level review of other use of force investigations will provide additional insight into SPD's use of force investigation practices, and is a component of our ongoing analysis.

PROMISING PRACTICES

Overall, SPD has the tools to develop a more effective and up-to-date system for reporting and investigating use of force incidents. Among other things, its current policies provide guidance on SPD's mandatory reporting procedures after a use of force. As noted above, SPD requires officers to intercede when observing another officer using unreasonable force, and requires the officer to report such incidents to a supervisor. SPD's use of BlueTeam, a centralized officer performance database system, helps track the number of use of force incidents, vehicle pursuits and accidents, and helps standardize its review.

In the area of transparency in particular, SPD has made great strides towards de-mystifying its processes by making publicly available via its website, among other things: all general orders, including use of force-related policies; information relating to officer-involved shooting investigations, and certain use of force statistics. Furthermore, SPD has made it a practice to release audio and video recordings, including in-car camera and body-worn camera footage from officer-involved shooting incidents to the public within 30 days of the incident. Such measures demonstrate concrete steps towards an openness consistent with building trust with the community.

RECOMMENDATIONS FOR IMPROVEMENT

The recommendations that follow seek to build upon existing practices and ensure that SPD moves forward in updating its internal policies related to use of force reporting, investigations and reviews to align with best practices. These recommendations speak to the need for greater clarity, specificity, and organization in general orders that apply to use of force reporting and investigation protocol, the categorization of "Reportable Uses of Force" for more accurate reporting and review across incidents, the establishment of separate procedures regarding the most serious use of force incident investigations, and greater transparency in use of force investigations.

1. Recommendation: SPD should create a general order dedicated to use of force reporting and investigations.

General orders are the rules under which the Department operates and, as such, need to provide sufficient clarity and specificity to be effective. Currently, force reporting obligations are described in General Orders 580.02 and 580.03, which address use of force generally and the use of firearms. Expectations about when officers should and should not use force in the field are mixed together with descriptions of the responsibilities and duties of SPD personnel regarding response, reporting, investigation, and review of force. A clear and complete order dedicated to use of force reporting and investigations, separate from the Use of Force policy, would benefit the officers, community and the department. All officers, not just those charged with

investigating the use of force, should have an understanding of the actions that will occur after a use of force incident.[75]

Clear and descriptive language regarding the steps that SPD will take in investigating uses of force can strengthen the trust between law enforcement and the public, especially if it provides the reasons behind the key steps.[76] The SPD's general orders should be specific enough to direct members' behavior and thorough enough to assure the public about the integrity of the investigation. The overarching goal should be to ensure that officers, supervisors, and managers are provided clear direction and that all use of force reviews and investigations are fair, thorough, objective, and timely.

The policy statement in a General Order on reporting and investigating use of force should ensure the following:

a. Every reportable use of force will be reported accurately, completely, and promptly;
b. All members of the department have an obligation to intervene, when possible, and report any observed unreasonable or unreported use of force by another officer;
c. Every reportable use of force will be investigated thoroughly and impartially and reviewed to determine the appropriateness of the officer's action and to determine if changes are required to policy, tactics, training or equipment;
d. A rigorous and transparent oversight system are implemented to ensure accountability and community trust; and
e. Use of Force Investigations are recognized as critical to promoting officer safety and the integrity of the Department.

Departments across the country have addressed these principles differently. Examples of how this recommendation may be operationalized can be found in the Seattle Police Department Manual (8.400) and New Orleans Police Department Manual (1.3.6). Both of these departments made significant progress under U.S. Department of Justice consent decrees and have adopted policies and protocols that represent some of the most promising practices in this area.[77] For example, Seattle's Use of Force Reporting and Investigation Policy is set forth in its opening sentence, "The Seattle Police Department recognizes the magnitude of the responsibility that

[75] The International Association of Chiefs of Police, *Concepts and Issues Paper, Officer-Involved Shootings, In-Custody Deaths, and Serious Uses of Force* (May 2012).
[76] Bureau of Justice Assistance, U.S. Department of Justice, *Considerations and Recommendations Regarding State and Local Officer-Involved Use-of-Force Investigations*. (August 2017) *Available at* https://it.ojp.gov/GIST/1202/Considerations-and-Recommendations-Regarding-State-and-Local-Officer-Involved-Use-of-Force-Investigations.
[77] *See* New Orleans Police Department Operations Manual, Chapter 1.3.6. (April 1, 2018). *Available at* https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-6-Reporting-Use-of-Force-EFFECTIVE-4-01-18.pdf. Seattle Police Department Manual, Section 8.400, Use of Force – Reporting and Investigation. *Available at* https://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation. *See also* Appendix A, p. 5 (Seattle Police Department Monitor found a 60% decrease in moderate to higher levels of force, in part due to rigorous reporting and oversight requirements).

comes with the constitutional authority to use force. This responsibility includes maintaining vigorous and transparent oversight systems to ensure accountability to the community and maintain their trust. In order to ensure transparency and accountability, officers must clearly and reliably report and thoroughly document each time they use force … "[78]

2. Recommendation: SPD should categorize reportable use of force into levels (i.e., Level 1, 2, and 3) based on seriousness and specify associated roles and responsibilities of involved officers, supervisors, and investigative personnel at each level regarding reporting and review.

Current SPD policy provides little in the way of standards or guidelines to ensure the uniform, accurate reporting of force. Indeed, standards as to when force is reportable are unclear. For instance, GO § 580.02 addresses instances where "officers are in doubt as to whether the [use of force] is reportable," but it does not indicate how "their supervisor, who will then be responsible for making the determination," decides whether force is reportable. SPD needs to revise its policies to define precisely when officer conduct constitutes force and, then, what uses of force are reportable – with any, if not all, uses of force beyond de minimis force considered reportable.

Reportable force is currently defined in GO 580.02 as "Any use of force (UOF) that causes injury as defined above; any UOF, whether or not it results in injury, involving the discharge of a firearm, a canine bite, or use of an impact weapon, chemical agent, carotid restraint, or CED; and any UOF, whether or not it results in injury, that deviates from the techniques taught and the equipment provided by the Department (see extraordinary conditions in section B.4.)." (GO 580.02 at 1.)

SPD's definition of a reportable use of force is problematic for several reasons. First, it omits types of uses of force that courts have indicated are considered seizures for Fourth Amendment purposes such as pointing a firearm at an individual.79 Second, the definition gives too much discretion to the individual officer or supervisor to determine whether the force does or does not "deviate from the techniques taught and the equipment provided by the Department." (Id.)

Though there is no single method by which to conceptualize reportable uses of force, the use of force categorization scheme created by the United States Department of Justice is one utilized by police departments around the country.80 The categorization of reportable uses of force into three levels (of escalating seriousness) helps departments to standardize their use of force report and review procedures. Categorization also provides officers clearer direction on reporting uses of force and what to expect once such a report is made. Finally, categorization enables supervisors to more easily track performance and trends in the uses of force.

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[78] Seattle Police Department Manual, *supra* note 77.
[79] *See Robinson v. Solano County*, 278 F.3d 1007 (9th Cir. 2002).
[80] *See e.g.* Baltimore Police Department, Policy 1115 Use of Force (March 2, 2018). *Available at* https://www.baltimorepolice.org/1115-use-force. New Orleans Police Department's Use of Force policy goes farther and proscribes four levels of use of force. *See* New Orleans Police Department Operations Manual, Chapter 1.3 Use of Force (April 1, 2018). *Available at* https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf.

The three levels correspond to the amount of force used or the outcome of the force. Factors in determining the appropriate categorization of the use of force include: the degree of injury caused; the potential for injury caused by the use of the technique or weapon; degree of pain or disability caused; level of restraint used; duration of force; and physical vulnerability of the subject.

SPD should develop its own categorization based on the below examples, culled from the United States Department of Justice and other model policies.[81]

De Minimis (Non-reportable)	• Includes escorting, touching, or handcuffing a person with minimal or no resistance.
Level 1	• Force that causes only transient pain or disorientation during its application as a means of gaining compliance, including hand control or escort techniques, but that is not reasonably expected to cause injury. • Pointing a firearm or conducted electrical device ("CED") at an individual. • "Cycling" a CED as a form of warning ("displaying the arc"). • Forcible takedowns that do not result in actual injury or complaint of injury.
Level 2	• Force that causes or could reasonably be expected to cause an injury greater than transitory pain but does not rise to a Level 3 use of reportable force. • Any discharge of a CED in drive-stun or probe mode, aimed at a person, that is not Level 1 or Level 3 reportable force, including misses. • Any use of OC (Pepper) spray or other chemical weapon. • Weaponless defense techniques (e.g. elbow strikes, kicks). • Any discharge of a less-lethal launcher/munition. • Any canine inflicted injury, except that would otherwise constitute Level 3 reportable force. • Any strike, other than a strike with an impact weapon to the head, neck, sternum, spine, groin or kidney area.
Level 3	• Strikes to the head, neck, sternum, spine, groin or kidney area with an impact weapon. • Firearm discharges, including unintentional firearm discharges. • Applications of more than three CED cycles on an individual during a single encounter regardless of the mode or duration of the application, and regardless of the officer. • Any CED application of greater than 15 seconds. • Uses of force resulting in death, serious physical injury, loss of consciousness or requiring hospitalization. • Uses of lethal force.

[81] *See e.g.* Seattle Police Department Manual, *supra* note 77 (Categorization of force including de minimis, and Levels 1-3); Cleveland Police Department Draft Use of Force Reporting Policy (October 4, 2016). *Available at* http://www.clevelandpolicemonitor.net/use-of-force-policies; Las Vegas Metropolitan Police Department, *supra* note 70 at 1158 (categorization of force into low level, intermediate, and deadly force); San Jose Police Department Duty Manual, Procedure L 2605.5: Commanding Officer's Responsibility by Use of Force Category (October 18, 2017), p. 250. *Available at* http://www.sjpd.org/records/dutymanual.asp.

The level hierarchy should be read in conjunction with an emphasis on necessity, proportionality and de-escalation in SPD's core policies regarding when officers may or may not use force. The more significant and severe the threat, the more appropriate a high level of force will be.[82]

3. Recommendation: Non-reportable levels of force should be clearly identified and described in the general order.

It is also important to define *non-reportable* uses of force. For example, SPD policy should make clear that some actions that technically constitute uses of force, such as handcuffing an individual or escorting an already handcuffed individual, are not *reportable* uses of force under SPD policy because they involve a *de minimis* force commonly necessary to effectuate law enforcement objectives and pose a very low level of risk of significant injury or harm to subjects or officers.

The policy should also state whether unholstering or displaying a firearm *without* intentionally pointing it *at* a person is reportable or not. Some jurisdictions find it useful to categorize such instances not as a reportable force but as a type of event or incident that should be recorded or documented in an incident report. For example, the Newark Police Department's general order devoted to use of force reporting treats the pointing of a firearm at an individual as a reportable use of force, but in the same section states that, "although some incidents do not require a use of force report or investigation, Police Division members will accurately and thoroughly document their encounter on the appropriate Division form (e.g., Incident Report, Arrest Report)."[83]

4. Recommendation: SPD should specify the reporting, investigation, and review requirements for each of level of force, including reporting requirements for the involved and witness officers, the responsibilities of the investigating supervisor, criminal and administrative investigator responsibilities, and review requirements.

Each of the force levels should have distinct and escalating reporting, investigation and review requirements. SPD's current policies provide little guidance on the level of scrutiny that a use of force incident should receive. Indeed, it is unclear from SPD's current policies whether any type of use of force automatically triggers an investigation. General Order 580.03 outlines certain post-incident investigatory steps, but the Order specifically addresses firearms discharges. Likewise, Reference Manual 220.01 addresses some elements and principles of administrative and criminal investigations but appears to be more directed at, and relevant to, misconduct investigations.

SPD should adopt a policy by which any reportable use of force, regardless of severity, is subject to investigation and review. Proportionality is key, however. The intent should be to ensure that

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[82] *See e.g.* San Francisco Police Department General Order 5.01 Use of Force (December 21, 2016), p. 14 (providing a chart of levels of resistance and corresponding force options). *Available at* https://sanfranciscopolice.org/sites/default/files/Documents/PoliceDocuments/DepartmentGeneralOrders/DGO%205.01%20Use%20of%20Force%20%28Rev.%2012-21-16%29.pdf.

[83] Newark Police Division, General Order 18-21, Use of Force Reporting, Investigation and Review, p. 7 (November 8, 2018). *Available at* https://docs.wixstatic.com/ugd/582c35_53f5bba5c79640cf8dcfff2078cbca2a.pdf.

all reportable uses of force are reported, investigated and reviewed, but with the appropriate amount of scrutiny and resources. As the level of force increases, likewise so should the level of reporting, investigation and review.[84]

SPD's current general orders and manuals have some of the elements necessary to accomplish this, but the orders need to be revised and organized around categories of force.[85]

4.1. Recommendation: Officers who use reportable force should be required to complete a Force Statement, as should officers who witness or are at the scene of a Level 2 or Level 3 use of force. All Force Statements should be entered into Blue Team.

General Order 580.02 states, "Included in the appropriate report [crime report, casualty report and/or incident report] is a description of how and why force was used and a description of injuries the suspect received or claims to have received." (GO 580.02 at 2.) This is not sufficient detail to fully understand an officer's decision to use force. A more detailed account including elements such as the reason for the initial police presence, a specific description of the acts that led to the use of force, a specific description of the resistance encountered, and a description of every type of force used or observed, will provide reviewers with a more complete understanding of the incident and why the use of force occurred, thus enabling them to make a more complete assessment of its appropriateness.

SPD's current policy is that the officer's field supervisor initiates a BlueTeam entry when medical attention is provided or in any incident where a firearm is discharged, a canine is deployed, or an impact weapon, chemical agent, carotid restraint or CED is used. According to current SPD protocol, the supervisor's entry is not supposed to summarize the incident but instead refer to applicable reports such as crime, casualty, or incident. Supervisors are to provide an opinion on whether the use of force appeared justified, within policy, and if there were tactical, training, or behavioral issues that were either addressed or referred to Internal Affairs.

Not capturing an officer's statement detailing the use of force incident from the officer's perspective significantly limits SPD's ability to comprehend the full circumstances surrounding the use of force, and the conditions under which force is used. This perspective is critical for a thorough investigation and review and for devising improvements to policy, training, tactics and equipment.

Officers who use reportable force, witness use of force, and/or officers at the scene of Level 2 or 3 uses of force should all be required to complete a Force Statement, including the descriptive elements identified above relating to the facts known to the officer at the time force was used.[86]

4.2. Recommendation: Level 1 uses of reportable force may, under ordinary circumstances be reviewed at the district or unit commander level. Any administrative investigation

[84] *See e.g.* Seattle Police Department Manual, *supra* note 77.
[85] *See id*. *See also* New Orleans Police Department policy, supra note 77, on reporting and investigating use of force as a guide to developing language for the general order.
[86] Elements of a Force Statement may also include: names of supervisors who were notified and responded at the scene, and whether a body-worn or in-car camera was activated and its identifiable file location.

opened as a result of a Level 1 use of force should be forwarded to Internal Affairs for assignment and review.

SPD should take already existing details from GO 580.02 (General Use of Force) and GO 580.03 (Firearms Discharge), along with the Internal Investigations Manual, Internal Affairs Daily Procedures, and Blue Team Manual, and build upon them in the general order devoted to use of force reporting and investigations. While not a routine occurrence, any administrative investigation opened in conjunction with a Level 1 use of force (whether due to complaint allegations or otherwise) should be sent to Internal Affairs for logging and assignment of investigation. Internal Affairs should also be responsible for reviewing the administrative investigation, even if it is conducted by a field supervisor.

4.3. Recommendation: Level 2 uses of force may be reviewed by the district or unit commander but should also be forwarded to Internal Affairs for administrative investigation assignment and review.

The purpose of the reviews that follow the investigation should be to determine: (1) if findings regarding the use of force are consistent with law and policy; (2) whether the investigation was thorough and complete; and (3) whether there are individual or departmental tactical, training, equipment or policy considerations that need to be addressed.

If, at any time during an investigation or review, the reviewer finds that the force used should be elevated to a Level 3 reportable use of force or that criminal activity was involved, Internal Affairs should be notified. If the force incident is elevated to a Level 3 use of force, or other circumstances exist that warrant it, Internal Affairs should assign the investigations to the Force Investigative Team (see below recommendation). Nothing in this recommendation is designed to limit the Chief's ability to refer any use of force case to Internal Affairs.

5. Recommendation: SPD should establish a multidisciplinary team to conduct both the criminal and administrative investigations of Level 3 Reportable Force Incidents.

SPD's policies currently address criminal and administrative investigation protocol in certain contexts. These policies contemplate that: (1) use of force incidents not involving a firearms discharge may be conducted by a field supervisor; (2) use of force incidents involving a firearms discharge will be investigated by the Homicide Unit; and (3) Internal Affairs may conduct an investigation related to a use of force incident if it appears to involve employee misconduct or if otherwise directed.

SPD would benefit from innovating its practices regarding force investigations. Police departments nationwide use Force Investigations Teams ("FIT") or Special Investigation Response Teams ("SIRT") to criminally and administratively investigate Level 3 uses of force, among other things.[87] The teams are generally housed within Internal Affairs. Within a team, the

[87] *See e.g.* New Orleans Police Department, New Orleans Police Department Policy Manual, Chapter 1.3.2 (April 1, 2018). *Available at* https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-2-Force-Investigation-Team-EFFECTIVE-4-1-18.pdf.

criminal and administrative sections are kept distinct from one another, as are their respective concentrations—the criminal section bearing responsibility for ascertaining whether the conduct at issue rises to a potential violation of criminal law, and the administrative section for determining whether the officers acted in accordance with departmental policy, procedures, rules, and training.

If a FIT Unit is created, SPD must ensure that the rights and protections established by the United States Supreme Court in *Garrity v. New Jersey*[88] and the California Supreme Court in *Lybarger v. City of Los Angeles*[89] continue to be respected. Under *Garrity,* evidence obtained from a public employee under the threat of dismissal from employment cannot be used in a criminal prosecution.[90] A "wall" must be placed between any information obtained from an employee's compelled statement during an administrative investigation and a criminal investigation of the same incident. This means there can be no information sharing from administrative investigators to criminal investigators. Otherwise, the prosecution must overcome the burden of convincing a judge that none of the evidence being used against a public employee in a criminal prosecution was obtained from the administrative investigation or derived from that investigation. There must be strict procedures protecting the security of information obtained during FIT criminal and administrative investigations. Under *Lybarger*, when a public employee might be charged with a criminal offense, management must advise the employee of his/her constitutional rights.

These safeguards should be specified in a procedural manual and should be referenced in a general order. The New Orleans Police Department, for example, has a separate general order governing its Force Investigation Team that reads:

> Information obtained through a criminal investigation can be shared with administrative investigators and made part of the administrative investigation. Consistent with applicable law, compelled statements obtained as a result of an administrative investigation shall not be shared with criminal investigators and cannot be made part of the criminal investigation.[91]

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[88] *Garrity v. New Jersey* 385 U.S. 493 (1967).

[89] *Lybarger v. City of Los Angeles*, 40 Cal.3d 822 (1985).

[90] "We now hold the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic." *Id.* at 500. California Courts have also applied this rule to peace officers under California law. *See Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822 (while an officer has a right to remain silent during an administrative investigation, their silence can be deemed insubordination, but statements made during such an interrogation cannot be used against the officer in a criminal proceeding), citing Cal. Gov. Code, §3303(h).

[91] New Orleans Police Department Operations Manual, *supra* note 87 at 5.

In addition to New Orleans, departments across the country (including Seattle, Baltimore, Los Angeles and Las Vegas) have established force investigative teams.[92] Among the advantages of utilizing specialized investigative teams are that criminal and administrative investigations can be run concurrently, which improves their timeliness. SPD should consider reaching out to these departments and arranging site visits to better understand how these teams were established and operate.

At minimum, SPD should ensure that a detailed manual is developed that governs serious use of force investigations--more comprehensively than its current policies. The manual should provide the most specific guidance for what should be the rare incidents in which an officer intentionally discharges a firearm at a person, and where an officer discharges a firearm which results in injury to a person. (*See* GO 580.03, discussed *infra*.) A revised manual addressing serious use of force investigations should specify, amongst other things:

- How investigations are assigned to detectives;
- A checklist guiding the investigative processes involved;
- Job descriptions and requirements for law enforcement personnel who investigate use of force incidents; and
- Initial and on-going training requirements for use of force investigators.

6. Recommendation: SPD should establish a Use of Force Review Board, charged with reviewing all Level 3 Reportable Uses of Force, all uses of force otherwise investigated by FIT, and any other matters referred to them by Internal Affairs or the Chief of Police.

Currently, the only use of force incidents that SPD requires a committee to review are those involving officer-involved shootings. Per GO 580.03, the personnel involved in a SPD officer-involved shooting review include: the captain of the involved employee; the training lieutenant; the field operations lieutenant (Watch Commander); the department range master; representatives from the Professional Standards Unit; Risk Management; Director of the Office of Public Safety Accountability; and the SPOA President. The presentation is given by the investigator, most commonly a detective from the Homicide Unit assigned to investigate the shooting.

According to policy, the purpose of such a review is to recommend to the Chief of Police whether the incident was: (1) legally justifiable; and (2) within Departmental policy. After the committee's review, representatives from the Professional Standards Unit are expected to prepare a memorandum to the Chief detailing the findings and recommendations from the officer-involved shooting review and prepare a memorandum to the involved officer advising them of the disposition. (*Id.*) The investigation is independently reviewed by the District

[92] *See* Baltimore Police Department, Policy 710, Level 3 Use of Force Investigations/Special Investigation Response Team (SIRT) (October 8, 2016). *Available at* https://www.baltimorepolice.org/710-level-3-use-force-investigationsspecial-investigation-response-team-sirt. Seattle Police Department Manual, Section 8.400, *supra* note 77; Las Vegas Metropolitan Police Department Use of Force policy, *supra* note 70, p. 1191 (describing responsibilities of Force Investigative Team). *See also* Los Angeles Police Department, Force Investigation Division. http://www.lapdonline.org/internal_affairs_group/content_basic_view/8790.

Attorney, who conducts an independent assessment of the facts and issues written findings as to the potential criminal liability in the case.

SPD should consider replacing its officer-involved shooting reviews with a Use of Force Review Board ("UFRB") with significantly broader responsibilities than the existing SPD officer-involved shooting committee review. The UFRB should review all Level 3 uses of force, any other FIT-led investigations, any command investigations forwarded by the Chief or his designee, and vehicle pursuits resulting in serious injury or death. For example, the Philadelphia Police Department has a UFRB, and an accompanying directive describing the types of cases subject to its review, its procedures, its composition, and its responsibilities.[93]

The UFRB's main purpose would be to serve as a forum for the kind of critical self-analysis that should result from every serious use of force investigation. In addition to determining whether an individual officer's actions were within policy and legally justified, the UFRB should also be tasked with identifying areas for improvement in Use of Force policy, training, tactics, and equipment and to make recommendations for implementing the improvements. UFRB responsibilities may include, among others:

- Affirming or rejecting the investigative recommendations.
- Referring the case for disciplinary action as warranted.
- Directing Commanding Officers to take and document non-disciplinary corrective action.
- Directing the Training Academy on using findings to improve training, defensive tactics, and firearms.
- Making recommendations concerning identified equipment deficiencies.
- Identifying commendable conduct by officers for appropriate recognition.
- Analyzing the Department's use of force overall to assess patterns and trends.

The composition of the UFRB may include personnel who currently participate in SPD's officer-involved shooting review committee, with the exception of the inclusion of the supervisors of the involved officers, who may observe but should not be decision-making members of the UFRB. For example, the Baltimore Police Department's Performance Review Board lists in its policy that its voting members shall include a cross-section of officers from the Patrol, Investigations, and Training Divisions, but the involved employee's commanding officer shall participate as a non-voting member.[94]

In order to operationalize a UFRB as outlined above, SPD will need to adopt supplementary policies addressing procedures, such as which cases come before the Board for review, how

[93] *See* Philadelphia Police Department Directive 10.4, Use of Force Review Board (September 18, 2015). *Available at* https://www.phillypolice.com/assets/directives/D10.4-UseOfForceReviewBoard.pdf; Baltimore Police Department, Policy 724, Performance Review Board (August 1, 2016) (Performance Review Board as responsible for reviewing all Level 3 Reportable use of force Incidents). *Available at* https://www.powerdms.com/public/BALTIMOREMD/documents/66412. *See also* Los Angeles Police Department, Use of Force Review Division. http://www.lapdonline.org/categorical_use_of_force/content_basic_view/47397.

[94] *See* Baltimore Police Department Policy 724, *supra* note 92. *See also* Appendix A, pp. 5-6 (describing benefits of allowing training staff to participate in administrative investigations of use of force incidents.)

cases come before the Board, who is responsible for coordinating the Board, and how training and oversight is provided to the Board.

7. Recommendation: The general order should specify time frames for the reporting, investigation, and review of reportable use of force.

Internal procedural justice principles require transparency of the investigation and review process. This includes not only detailing the steps that will be taken but also the time it will take to complete key benchmarks. SPD's current firearm discharge policy (GO 580.03) requires the Professional Standards Unit to "[S]chedule and facilitate an officer-involved shooting review by the investigating watch commander or Homicide Unit sergeant within 30 days of the shooting unless otherwise approved by the COP [Chief of Police]." (GO 580.03 at 6.) However, SPD personnel indicated that the 30-day deadline is routinely delayed due to the ongoing criminal investigation.

If an investigation remains open for an extended period of time, it is both difficult for the officer and harmful to the public trust. Enforcing deadlines can be a difficult task, but individual and departmental accountability require it. If meeting deadlines is a recurrent issue, SPD should consider modifying existing deadlines or creating alternate benchmarks for completion of investigatory steps. For example, New Orleans Police Department's FIT team is required to complete a preliminary report within 24 hours of the use of force incident, and its administrative investigation within 30 days from the use of force, with an option of a formal request for an extension.[95] With respect to the criminal investigation, the policy includes a variety of deadlines that depend on the nature of the investigation, such as obtaining a coroner's report (30 days), and if a use of force incident results in the death of the suspect, the FIT investigators are required to complete their report within 45 days of the incident.[96]

SPD should permit such deadlines to be extended when requested in writing, but the process to receive an extension should be included in the general order. The involved officer should also be notified if an extension is granted. Setting time frames at the inception of an investigation can help manage expectations, and SPD should hold itself accountable for missing deadlines and failing to request extensions.

8. Recommendation: A general order on reporting and investigating use of force should reflect officer wellness and safety concerns.

It is important to protect not only officers' physical safety but also their emotional wellness.[97] Use of force situations will place officers in danger. That is why one of the primary goals of reviewing use of force is to identify opportunities to enhance departmental policy, training,

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[95] *See* New Orleans Police Department Operations Manual, Chapter 1.3.2: Force Investigation Team (April 1, 2018), p. 7. *See also* Baltimore Police Department, Policy 710, Level 3 Use of Force Investigations/Special Investigation Response Team (SIRT) (October 8, 2016), pp. 4-5. *Available at* https://www.baltimorepolice.org/710-level-3-use-force-investigationsspecial-investigation-response-team-sirt.

[96] *Id.*

[97] Police Executive Research Forum, *Guiding Principles on Use of Force* (March 2016), p. 23. *Available at* https://www.policeforum.org/assets/30%20guiding%20principles.pdf.

tactics, and equipment issues that may put officers in more risk than necessary. The correction of these issues can greatly improve officer safety and minimize the need to use force in some instances.

Officers who are involved in shootings or have used deadly force may experience a variety of emotional or mental health challenges including, anxiety, isolation and depression. This is why, for example, the Seattle Police Department's policy devoted to use of force investigations provides for mental health services for officers who witness any portion of a lethal force incident, including the first six visits with a mental health professional over a one-year time period beginning on the date of the incident. The policy also provides that the witness officer may bring a family member along at no extra charge to any or all covered visits.[98] Further, the San Diego Police Department has established a well-regarded Wellness Unit to coordinate the provision of support services to respond to the physical and emotional health needs of its officers.[99]

The emotional impact on officers of using deadly force and being under investigation cannot be underestimated. SPD GO 570.04, last updated in 1991, outlines SPD's Peer Support Program, which consists of a team of personnel including officers, selected chaplains, dispatchers and psychologists who are trained to provide emotional support and resources to officers involved in "Critical Traumatic Incidents." (GO 570.04 at 1.) The policy states that the personnel involved in the program shall provide an immediate response "when called upon." (*Id.*) Per SPD policy on officer-involved shootings, one of the duties of the initial on-scene supervisor is to offer employees peer support. (GO 580.03 at 2.) Supervisors should be familiar with this program and make the necessary referrals.

9. Recommendation: SPD should identify the nature and extent of the use of force information it will release to the public.

As noted, SPD has already demonstrated a commitment to greater transparency in a number of ways. SPD's efforts include making available on its website: SPD Use of Force polices, some statistics on use of force, and summaries of the circumstances surrounding officer-involved shootings dating back to April 2016, including video footage (from in-car and body worn cameras and other sources) and audio clips. SPD can go a step farther in this direction by formalizing, in its Use of Force policy, what types of information will be released to the public, when, and in what circumstances. Types of information that can be released on an annual or monthly basis include: aggregate data describing what force was used and under what circumstances, and the outcomes of serious use of force investigations, including recommendations made as a result and the progress towards implementing those recommendations. For example, the Philadelphia Police Department provides detailed

[98] *See* Seattle Police Department Manual, Section 8.400-POL-4 Use of Force—TYPE III Investigations (September 1, 2015). *Available at* https://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation.

[99] *See* U.S. Department of Justice Office of Community-Oriented Policing Services and Police Executive Research Forum, *Building and Sustaining an Officer Wellness Program, Lessons from the San Diego Police Department* (2018), pp. 1-2. *Available at* https://www.policeforum.org/assets/SanDiegoOSW.pdf.

information on officer-involved shootings on its website, including relevant policies, crime trends and maps, and the Los Angeles Police Department provides on its website abridged use of force summaries, prepared annually by its Office of Inspector General.[100]

10. Recommendation: SPD should consider entering into a Memorandum of Understanding with an outside agency regarding a potential role in future use of force investigations and SPD improvements around serious use of force.

SPD currently utilizes its own personnel to investigate all uses of force, including the most serious uses of force. The President's Task Force on 21st Century Policing, among other experts in policing, have recommended that police departments use an external agency to investigate certain serious uses of force, depending on capability.[101] Advantages identified in external or independent investigations are: increased transparency and accountability, improved public trust in policing, greater public confidence in the outcomes of investigations, reduced suspicion or criticism of police, and reduced actual or perceived bias in the investigations. Disadvantages identified included skepticism or lack of trust between investigators and involved officers, less control over processes and information, logistical complexity, and cultural barriers.[102]

This recommendation could be accomplished on a case-by-case basis or by identifying, via a memorandum of understanding (MOU), the types of cases to be referred by SPD for investigation. For example, with respect to the criminal investigations undertaken by its internal Force Investigative Team, the New Orleans Police Department Manual provides that, "The Department may relinquish its criminal investigation to an outside agency or may request the criminal investigation be conducted by an outside agency with the approval of the Superintendent of Police, or his/her designee."[103]

If SPD does consider entering into an MOU with an outside agency to investigate and or review a use of force incident, an agreement should detail responsibilities such as, members composing the investigative team, the investigative process, and developing findings of fact to provide to the District Attorney's Office.[104] Additionally, the MOU should detail how an investigation, and/or its findings are transitioned from one agency to another, including briefings and documentation. SPD works closely with the Office of Safety and Public Accountability (discussed in further detail with respect to the complaint process, *supra*), and should consider what role, if any, OPSA could and should play in the review of use of force incidents, and include the parameters in the general order.

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[100] *See* Philadelphia Police Department, "Officer-Involved Shootings." https://www.phillypolice.com/ois/. Los Angeles Police Department "Categorical Use of Force." http://www.lapdonline.org/categorical_use_of_force.
[101] Bureau of Justice Assistance, *supra* note 76*;* Kuhns, Joseph B., Josie F. Cambareri, Shannon Messer, and Darrel Stephens. 2018. *Independent Investigation of Officer-Involved Shootings: Current Practices and Recommendations from Law Leaders in the United States and Canada.* Washington, DC: Major Cities Chiefs Association. *Available at* https://www.majorcitieschiefs.com/pdf/news/ois_fiinal_report_9_27_18.pdf.
[102] *Id.*
[103] New Orleans Police Department Manual, Chapter 1.3.2, *supra* note 87 at 5.
[104] Bureau of Justice Assistance, *supra* note 76*;*

USE OF FORCE TRAINING

Training is the foundation of police work. It is where officers are taught the principles that enable them to assume the authority in which they are invested by the public. That authority includes the unique ability to use force, including lethal force in the course of their duties.

Developing an officer's capacity to make decisions on how and when to use force begins with his or her initial training at the police academy. The minimum training requirements for recruits are established by the California Commission on Peace Officer Standards and Training (POST).[105] Once recruits become officers, they must complete Continuing Professional Training. Per POST, every peace officer must complete 24 or more hours of Continuing Professional Training (CPT) during every two-year cycle.[106] CPT often focuses on refreshing skills or providing critical policy and physical skills updates. As part of this requirement, peace officers must complete a minimum of 12 hours of training for perishable skills in the areas of: driving training and awareness, arrest and control, and tactical firearms or a Force Options Simulator program. California POST identifies two perishable topic areas that are specific for use of force incidents: (1) arrest and control and (2) tactical firearms. Therefore, POST requires a minimum of eight hours of training for each of these two components in a two-year training cycle.[107]

DOJ had the opportunity to observe a number of training sessions in-person, including both in-service (CPT) and Academy training. The training material covered a variety of topics, including use of force training, internal affairs, crowd and riot control, use of canines, cultural diversity, people with disabilities, and crisis intervention training, amongst others. In addition to classroom observation, the team reviewed written training materials received from SPD, including their Field Training Manuals, Academy curricula, use of force-related manuals (Baton, Carotid Control Hold, Firearms); as well as course outlines, such as for the Police Survival and Tactics Course, Procedural Justice for Police course, and the Racial Profiling update.

The breadth and depth of SPD's training function extends far beyond what is discussed in this report. Instead, this report focuses on areas specifically relating to, or impacting, use of force principles.

PROMISING PRACTICES

SPD consistently requires more training than is required by POST, which is critical to maintaining a dynamic and adaptive approach to policing. In the area of use of force, in addition to the POST-mandated training provided to recruits at the academy, SPD requires all new officers (academy graduates) to attend after-academy training consisting of five weeks of instruction on a variety of topics including the use of canines and CED training. Use of force

[105] *See* "Regular Basic Course Minimum Hourly Requirements," Commission on Peace Officer Standards and Training. *Available at* https://post.ca.gov/basic-course-training-requirements (last accessed November 6, 2018).
[106] *See* "Basic Course Training Requirements," Commission on Peace Officer Standards and Training. *Available at*https://post.ca.gov/basic-course-training-requirements (last accessed November 6, 2018).
[107] *Id.*

principles are also touched upon at in-service training in courses such as "Crowd and Riot Control."

SPD's receptiveness to adapt to changing police practices is reflected in the changes made to its training program in recent years, including requiring all officers (on a rolling basis) to participate in a 40-hour Crisis Intervention Training (CIT). The CIT classes observed by our team included panels with representation from outside organizations (such as the California State Council on Developmental Disabilities) as well as mental health practitioners, and members of the community. SPD also has added training on awareness of issues surrounding the LGBTQ community.

Training policies, curriculum, lesson plans, and instruction must reflect SPD's values and policies while, at the same time, engage with police officers as adult learners. For the most part, SPD's training accomplishes these goals. DOJ observed instructors who were knowledgeable, engaging, and enthusiastic about the material. Core principles were covered and discussed during observed classes. Scenario-based learning was also included in the methods of instruction. Recruits appeared attentive and perceptive, asking relevant questions throughout. The training facility (used for the SPD Academy as well as in-service training) is spacious and conducive to different modes of learning, with classrooms, mat rooms, and an area known as the "Tactical Village" where spaces are set up as different locations (such as a residence or a bar) for scenario-based training. SPD's overall training apparatus demonstrates an acknowledgement of and commitment to its importance.

RECOMMENDATIONS FOR IMPROVEMENT

SPD should be commended for its commitment to training, its engaging instructors, and the diversity of courses offered. However, we observed considerable variation (from instructor to instructor) in overall quality and effectiveness of course content and instruction in terms of conveying SPD's mission, values, and policy. Such variation creates the potential, which we witnessed, of disparate messaging, muddled concepts, and missed opportunities to reinforce guiding principles. SPD should work towards the centralization and standardization of course content and instructor selection, training, and evaluation, to ensure all training best serves the interests of both officers and the community.

1. Recommendation: SPD's Training Academy should place greater emphasis on teaching officers to have a guardian mindset.

The training academy is the first opportunity for SPD to teach the individuals who enroll as recruits its vision of what it means to be an officer in the City of Sacramento. Lessons learned in the Academy remain with officers for the duration of their careers. Because of its primacy – the academy is often the first exposure recruits have to the world of policing—the academy is unique in its ability to influence the way officers perceive themselves, their responsibilities, and their relationship with the community.

Examinations of police culture have recognized two distinct approaches: the warrior mindset and the guardian mindset.[108] The approaches manifest themselves in actions, decisions, and culture. Historically, law enforcement training was styled and heavily influenced by the military, with a focus on using force to subdue and overpower rather than to protect and serve. Terminology such as "battle ready," "siege," and other military jargon is routinely used to describe the non-wartime situations in which most officers find themselves day-to-day. The warrior mentality simulates a world in which officers are locked in "intermittent and unpredictable combat with unknown but highly lethal enemies." [109] Consequently, officers internalize a sense of fear; this influences the way that they see themselves in relation to the individuals they encounter and can impact the choices they make, particularly with respect to the use of force.[110]

Both warriors and guardians seek to protect the communities they serve. However, the guardian mindset sees the import of short interactions in creating long-term relationships.[111] Adopting a guardian training philosophy does not mean ignoring necessary defensive skills. Police recruits must know how to protect themselves and how to use force appropriately and effectively. In this vein, the guardian mindset "emphasizes communication over commands, cooperation over compliance, and legitimacy over authority. And, in the use-of-force context, the Guardian emphasizes patience and restraint over control, stability over action."[112]

Observations of SPD's training academy revealed that SPD is setting a tone and culture more consistent with a warrior mindset. For example, recruits are expected to stand against the wall at attention and acknowledge anyone passing by—a traditional, military academy-style of expectation that conveys a very specific message about power and authority. Trainers and students in an academy operating under a guardian philosophy behave differently with one another. For example, instead of snapping to attention and avoiding eye contact, a recruit is expected to make eye contact and initiate a conversation—skills that may be especially important to develop in younger or less experienced recruits and that are more readily applicable to the day-to-day obligations of a police officer on patrol in the City of Sacramento.

While reinforcing a warrior mentality during survival skills training and other training exercises is appropriate, this mentality was reinforced to the neglect of the guardian approach in observations of other training academy class instruction, including core use of force courses. For example, in its eight-hour *introduction* to use of force academy training, the class opened with a photographic montage of police officer funerals, narrated by a monologue from the film *Any Given Sunday*. In the monologue, a football coach urges his players to be aggressive and

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[108] *See* the President's Task Force on Twenty-first Century Policing, which recommended that, across its functions, "[l]aw enforcement should embrace a guardian – rather than a warrior – mindset." *Final Report of The President's Task Force on 21st Century Policing* (May 2015), p. 1. *Available at* http://elearning-courses.net/iacp/html/webinarResources/170926/FinalReport21stCenturyPolicing.pdf.
[109] *See* Staughton, Seth. "Law Enforcement's 'Warrior' Problem," Harvard Law Review Forum, 128 Harv. L.Rev. 225 (April 10, 2015).
[110] *Id.*
[111] *Id.*
[112] *Id.*

view the other team as a mortal enemy. A number of provocative statements were made during this narration, including:[113]

- "We are in hell right now."
- "We can stay here and get the s*&t kicked out of us or we come out of it."
- "We fight for inches because inches make the f*^&ing difference between winning and losing, living and dying."

The video narrator went on to challenge the listeners to fight and was encouraged by shouts of support and agreement.

Simply put, in the first exposure recruits have to use of force principles, SPD appeared to characterize officers' worlds as one in which they face constant war--one in which they either win or die. No matter how much subsequent tactical communication, de-escalation, and principles of the sanctity of life may be mentioned in the remainder of the academy, SPD's introductory message to recruits is that they must be warriors, prepared to fight the community at any moment. While it is crucial for officers to be well prepared for the risks they face, some of which are life-threatening, encouraging a state of constant heightened aggression can lead to less safe outcomes for officers and community members.[114]

SPD's training materials related to use of force also seemed to emphasize more of a warrior mindset. From topics ranging from vehicle pursuits to active shooting and lethal force scenarios, DOJ noted in its review of training materials that instruction focused somewhat disproportionately on mechanisms for applying effective force rather than making tactical decisions on how to resolve the situation with a minimum amount of force.

SPD would benefit from incorporating more consistently principles of the guardian philosophy throughout its culture.[115] That culture begins its formation in critical, lasting ways within academy training. How an instructor treats recruits can convey a stronger and more enduring message about acceptable personal conduct within the Department than specific training content to the contrary. Recruits will understand how they should behave and relate to others in their new profession based on their initial interactions with Academy instructors. To be reinforced, SPD must adopt these principles throughout the Department--in its policies, protocols, and practices. It must also be embraced by all ranks--including command staff. And officers who display problem-solving consistent with the guardian approach should be recognized and commended.

SPD might consider reviewing the approaches of the Los Angeles Police Department and the Washington State Training Commission to experience how organizations have operationalized

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[113] *Available at* https://youtu.be/WO4tIrjBDkk?t=150.

[114] *See* Staughton, *supra* note 109 (quoting Sue Rahr, a former sheriff, former Director of the Washington State Criminal Justice Training Commission and a member of President Obama's Task Force on 21st Century Policing, "We do our recruits no favor if we train them to approach every situation as a war. To do so sets them up to create unnecessary resistance and risk of injury.").

[115] *See* Appendix A, p. 7 (further describing benefits of the guardian mindset).

the "guardian" philosophy.[116] The Washington State Training Commission has been a leader in incorporating the guardian mindset in its training of new recruits. Its curriculum reflects the teaching of investigative, tactical and enforcement techniques but also includes innovative approaches, such as use of the "LEED" model. "LEED" is an acronym for "Listen," "Explain," "Equity," and "Dignity," principles which are operationalized through classes emphasizing officer safety and wellness, crisis intervention training, justice-based policing, and tactical social interaction. Washington's Training Commission explains,

> Training Guardians means more than just adding new material however. It means that we must "practice what we preach." We cannot tell officers that they should treat the community with respect if we model the opposite in our interactions with them. To that end we have limited some aspects of the "boot camp" approach. Standards are high and much of the training is academically and physically rigorous. Training Officers [to] act as mentors and coaches as opposed to drill instructors. Outside of clearly designated training scenarios recruits are not belittled or "broken down." Treating recruits and trainees with respect is core to WSCJTC's training philosophy.[117]

2. Recommendation: SPD should ensure that its Training Academy staff and the content of all training initiatives reflect and embody the Department's mission, core values, and policies.

Training is the primary method by which policy is translated into practice. This is particularly essential when it comes to use of force. SPD's training should reflect the Department's current policies and approach towards policing. Officers are inculcated into police culture during training at the Academy, where recruits learn not only critical decision-making skills, but also informal expectations and behavioral standards. As the Police Executive Research Forum stated in their report *Guiding Principles on Use of Force*, "The content of police training and the training academy culture should reflect the core values, attributes, and skills that the agency wants its personnel to exhibit in their work in the community."[118]

Our review of SPD training materials and observation of classes demonstrates that SPD should examine and revise its training to emphasize principles that should be at the forefront of its Use of Force policy, including the sanctity of life, de-escalation, the elements of tactical communication. For example, while SPD's written training materials mention de-escalation, it appears perfunctory in manner, does not involve discussion on how to employ these strategies, and specific de-escalation approaches are not covered. For instance, the stated objectives of the

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[116] *See* Mather, Kate, "LAPD urges officers to be community guardians, not warriors on crime," *Los Angeles Times*, August 21, 2015. http://www.latimes.com/local/crime/la-me-warrior-guardians-20150821-story.html?int=lat_digitaladshouse_bx-modal_acquisition-subscriber_ngux_display-ad-interstitial_bx-bonus-story.

[117] "Training the Guardians of Democracy," Washington State Criminal Justice Training Commission. *Available at* https://fortress.wa.gov/cjtc/www/index.php?option=com_content&view=article&id=425:training-the-guardians-of-democracy&catid=0.

[118] *Guiding Principles on Use of Force*, *supra* note 24 at 50.

"Police Survival and Tactics Course" focus solely on skill development and improving "student officer safety, survival, and field tactic skills." These objectives are undoubtedly important in and of themselves, but the content of the curriculum should also relate to the overall conception of *how* SPD wants its officers to police.

In the observation of SPD's use of force training class at the Academy, there were many unrealized opportunities to communicate core principles reflected in policy. For example, the instructor spent a significant amount of time emphasizing the requirements of the law without effectively communicating the importance of particular Department policies related to use of force. For most of the first half of the session, the only reference to the Use of Force policy was a cite to the catch-all provision that allows SPD officers to do whatever is necessary. Case law was the primary focus of the training – likely because POST training requirements stress knowledge of the legal basis for the use of force.

Instruction was clear and thorough with respect to use of force reporting, but the sanctity of life was mentioned only fleetingly and with an admonition that the primary concern is safety and security of officers. Instructors referenced de-escalation techniques, and invited recruits to consider them, before using force in a particular situation. Yet, at the same time, instructors covered material that seemed to de-emphasize de-escalation or make it seem less pragmatic. For example:

- One instructor indicated that "de-escalation is most appropriate for people in mental health crisis because it can backfire on a non-compliant criminal suspect."

- The training indicated the use of de-escalation techniques is not required by law, and when recruits would often appropriately suggest that a given situation could have been de-escalated, the instructor would caution them on the inappropriate use of de-escalation, implying an incompatibility with officer safety instead of a tool to increase safety.

These examples were concerning because de-escalation and officer safety are not, and should not, be presented as mutually exclusive concepts. Indeed, they are complementary and, when used effectively, mutually reinforcing.

The class concluded with team presentations summarizing and analyzing recent and notable use of force incidents from across the nation. Recruits were tasked with seeking out information about a use of force incident, analyzing the incident based on relevant law, providing the class with a conclusion, and defending that conclusion while also acknowledging potential counterpoints. The team exercises were clearly helpful in helping recruits apply the concepts they had learned. However, notably:

- At least two teams arrived at a different conclusion than the investigators who assessed the use of force incidents at issue. Instructors did not push recruits to understand why they had arrived at a different, potentially incorrect conclusion. They either called into question the efficacy of the use of force investigation and

review that took place, or, in one instance, implied that it was politics that drove the decision.

- Instructors did not provide much guidance during the presentations, and did not critically assess the rationales provided by recruits for their conclusions. Instead, the instructor frequently stated that recruits should not be too harsh in their judgments given that they were not in the situations that led to the use of force.

These examples demonstrate instances where the instructor failed to harness the value of the video as a training tool – and problematically suggested that an officer's actions can never be analyzed or criticized by anyone who had not experienced precisely what the involved officer did. Through the recommendations discussed in this section, including the vetting of instructors and lesson plans, SPD can improve the clarity of messaging with regard to its use of force course materials and classroom instruction.

3. Recommendation: SPD should establish a Curriculum Design Committee that reviews and approves all curricula, lesson plans, and training materials (including the use of videos).

SPD does not have a formal curriculum or lesson plan development and approval process for training courses taught in either the Academy or In-Service Training. Although the vast majority of courses taught in the Academy are selected and developed by the California POST Commission, SPD does not have a process to create, review and approve the lesson plans for the POST courses it teaches. Nor does SPD have a process to review and approve SPD (non-POST) courses and lesson plans. It appears that SPD currently relies solely on the training sergeant and/or another training staff member to review and approve curriculum and lesson plans.

The lack of a process for review and approval of course content means there is no formal mechanism to ensure SPD course curriculum and lesson plans are consistent with the Department's policies and core values. And there is no mechanism to ensure lesson plans developed for POST courses are, in fact, consistent with the intent of that curriculum and core principles of those courses. During our observation of training, DOJ observed instructors share videos and anecdotes that, in many ways, undermined the key principals of those courses.

The lack of rigor in lesson plan development was particularly problematic in non-tactical policing courses, such as those touching upon community policing, implicit bias, and cultural diversity. For example, DOJ observed a course, ostensibly meant to discuss fair and impartial policing and implicit bias, wherein a video was shown of the artist Beyonce's 2016 Super Bowl halftime show performance. The instructor identified Beyonce's background dancers' dress as invoking the Black Panthers and characterized the performance as a problematic perpetuation of the "us v. them" mentality that "some" members of the community possess.[119] However, the instructor implied that this artist's expression was an unfair depiction of anti-police sentiment, without placing it in context. There was no discussion of the basis of the perspective expressed in the video, including the historical origins of mistrust that some communities of color have

[119] *Video available at* https://www.youtube.com/watch?v=uqGwekWZeRI.

towards law enforcement, or notions of procedural justice or police legitimacy. Instead, it was merely raised as a perspective that officers should be on notice of, and that seemingly unfairly exists. Given the available literature, including POST's Principled Policing (Procedural Justice and Implicit Bias) Training developed by law enforcement and scholars, SPD would be better served by using existing, vetted models in this subject area.

We also observed a problematic use of video during a course on cultural diversity. In the video clip of an Australian news story, a woman wearing a burkha is pulled over by the police. According to the news report, the woman later alleged that, during the traffic stop, the officer ripped off her burkha to identify her. Video footage later proved the accusation false. In the discussion following the viewing of the video, the instructor merely highlighted that the in-car camera was effective in exonerating the officer. Again, this seemed to be a missed opportunity to unpack an otherwise complicated subject—policing with respect to communities of particular faiths—and unnecessarily shoehorned it into another example of the "us v. them" narrative. In contrast, later on during the training, the instructor played a training video produced by the Chicago Police Department on proper ways of interacting with members of the Sikh faith.[120] The video was an excellent example of an effective tool in both educating the officers and offering them practical tips on how to respectfully encounter members of their community who may be different from them, and with whom they may be unfamiliar.

As stated by the President's Task Force on 21st Century Policing,

> Though today's law enforcement professionals are highly trained and highly skilled operationally, they must develop specialized knowledge and understanding that enable fair and procedurally just policing and allow them to meet a wide variety of new challenges and expectations. Tactical skills are important, but attitude, tolerance, and interpersonal skills are equally so. And to be effective in an ever-changing world, training must continue throughout an officer's career.[121]

We therefore recommended SPD develop a Curriculum Design Committee responsible for reviewing and approving all SPD curriculum, lesson plans and training materials. This committee would differ from the Training Committee recommended above as it should focus exclusively on curricula and lesson plan development, review, and approval. This committee should be convened by the training commander whenever a new course is developed or an instructor wishes to make changes to an existing curriculum or lesson plan. The committee should involve key training staff, such as the training sergeant and lieutenant, the appropriate subject matter expert(s) for the specific course being developed, and representative(s) from relevant community stakeholder organizations that have an expertise on the course topic (see below recommendation).

4. Recommendation: SPD should find additional meaningful ways to incorporate members of local colleges and universities, community-based organizations, and

[120] *Video available at* https://www.youtube.com/watch?v=Zi9zUXpHPxs.
[121] Final Report, President's Task Force on 21st Century Policing, *supra* note 108 at 52.

community members into their curriculum and lesson plan development process and instructional activities.

Officers interact with the community on a daily basis. Members of the community can make important contributions to the design and implementation of training to help ensure it reflects specific local needs and challenges.[122] Involving members of the public in the development of training content and delivery also serves to increase transparency, and provides both sides with a better understanding and appreciation of what the other does.
In Sacramento, university and college professors could assist in providing substantive information in building adult learning lesson plans. Community members can offer insight into issues facing particular neighborhoods of Sacramento and share lessons from their individual experiences with police officers. Community based organizations can offer expertise in the areas of domestic violence, sexual assault, mental illness, homelessness and other social issues. Indeed, DOJ met with a number of these organizations who expressed a desire to be part of the training process. Using these groups could broaden and improve the content of the lessons and participate in the training themselves, ultimately resulting in a better-informed public and a better-trained officer more acquainted with, and responsive to, community needs and realities.

5. Recommendation: SPD should establish a Training Committee responsible for assessing the effectiveness of the curricula against current policies, as well as the integration of use of force scenario-based training, guardian philosophy and adult learning theory.

Representatives on the Training Committee should consist of SPD personnel of all ranks and varied assignments. At minimum, representatives from Patrol, Investigations, and other specialized units along with Academy staff comprise the Committee. The Committee should provide regular reports to the Chief reflecting its findings and recommendations. It should develop feedback mechanisms to obtain opinions regarding recent trainings and training needs. This can include the use of surveys, focus groups, and other means of measuring what was learned from the training sessions. In addition, the Committee should be charged with reviewing and recommending courses for an annual training plan.

SPD already reflects adult learning approaches in much of their training; however, they could benefit from more realistic scenario-based training, particularly with regard to use of force. Integrated, scenario-based training provides officers with opportunities to develop skills in realistic settings – learning by doing and refining understanding of policies, expectations, or concepts by applying them in the types of situations that they may come across in their day-to-day work.[123] Officers in a 2017 study suggested that scenario training needed to be sufficient in duration to allow officers to develop and use a diversity of skills and abilities.[124] Often, this study found scenario training is insufficiently dynamic or unpredictable, and the feedback that was provided was not geared towards constructive criticism.

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[122] *Id.* at 54.
[123] *See* Appendix A, p. 7 (referencing study which showed officer preference for an engaged learning environment based on real-world scenarios).
[124] Rajakaruna, Nikki, et. al. *Ensuring the Validity of Police Use of Force Training*, 18 Police Practice and Research 507-521 (2007).

In some of the SPD courses DOJ attended where scenarios were employed, only a few recruits could directly participate because of class size. Also, due to constraints with space and role players, some of the scenarios were not particularly challenging or illustrative. SPD should consider bringing in outside actors, expanding the number of instructors, or break larger classes into manageable sub-groups so that all recruits can proceed through scenarios.

The Academy staff currently involves Field Training Officers (or "FTOs") in providing some training and as part of evaluating some scenarios. SPD should extend this effort and require quarterly meetings between the Training Committee and FTOs to ensure that all are operating consistently.

Similarly, all use of force and force-related topic instructors should meet regularly as a group and with the Training Committee, to ensure that they are addressing issues that arise in the appropriate manner. As discussed, in the various training that DOJ observed, there were several missed opportunities to reinforce key use of force principles, such as de-escalation and the sanctity of life. Regular, formalized opportunities for instructors to debrief with one another will assist SPD in ensuring that its core use of force principles are addressed and reinforced across all force-related training.

6. Recommendation: SPD should have clear guidelines for selecting training instructors, with prior performance history being a significant factor in the selection criteria.

SPD's current instructor recruitment and application process is primarily informal (reputational or "word-of-mouth"). While high-performing employees are often well-known in an organization, an informal approach creates the potential for disparate representation, or the appearance of favoritism.

SPD should move to a more formal and standardized recruitment and application process. Instructors should be selected based first and foremost on how they have performed across their careers. SPD should ensure that it has a policy on instructor selection that includes a review of performance history – and individuals with an atypical number of misconduct investigations, or an atypical number of such investigations, should be subject to significant scrutiny before being appointed to an instructor position. Likewise, the Department should evaluate whether an instructor candidate has a history of deficient performance in areas such as use of force, civilian complaints, lawsuits, discriminatory policing.

6.1 Recommendation: Instructors should be actively involved in the development and discussion on key policies.

In order to promote consistency in the way policy is being taught at the Academy and in-service, SPD should ensure that it involves instructors in the development of its policies. Instructors can offer insight on how a particular policy change may be reflected in officer behaviors. Instructors may also better understand which changes are needed and how the intent behind a policy can be translated into instructional material. Finally, instructor participation provides management with an opportunity to judge instructors' willingness to accept and commit to the proposed changes.

6.2 Recommendation: SPD should regularly convene its FTOs, and its force-related training instructors, to ensure consistency and high-quality training.

During various trainings, DOJ observed several missed opportunities to reinforce key use of force principles, such as de-escalation and the sanctity of life. Regular, formalized opportunities for all use of force and force-related topic instructors to meet with the Training staff will assist SPD in ensuring that core principles are being addressed in an appropriate and consistent manner.

Additionally, academy courses currently involve both FTOs and SPD officers in instructing and evaluating scenarios. SPD should expand upon this effort and require quarterly meetings between the Training staff and FTOs to ensure consistency in messaging of core principles in the classroom and in the field.

7. Recommendation: SPD should evaluate the quality and effectiveness of its training, including evaluating student learning, and conducting formal instructor evaluation and classroom audits.

In the SPD training curricula that DOJ reviewed, we saw scant indication that SPD's training includes an evaluative element that might require students to demonstrate learning, comprehension, or skill acquisition. For instance, although the Edged Weapons Training concludes with a "stress confidence drill," with desired officer performance identified ("Officer should concentrate on zoning and triangulation techniques using knife strikes."), the curriculum does not indicate whether any training instructor is grading or evaluating student officers on whether they are performing as prescribed.

The Department should ensure that it designs all of its training in a manner that allows it to gauge whether individual officers have met the defined learning criteria. Depending on the nature of the training, that could include a short "paper-and-pencil" test or an instructor-graded completion of a scenario, physical maneuver, or analysis of a video or verbal example situation. Certainly, in the context of any training, officers need an opportunity to learn, absorb information, obtain skills, and practice their skills or knowledge. However, if the goal is for officers to come away from training with particular skills, the Department should ensure that officers have, in fact, developed these skills.
With respect to feedback on instructors, SPD apparently requires students to conduct course evaluations following all training courses. Training staff indicated that they regularly review these evaluations, and when consistent deficiencies are noted, share that information with the instructor. However, it appears instructor evaluation is currently limited to student evaluations and does not include classroom audits, except in response to specific concerns or complaints brought to the attention of the training staff.

SPD should establish a regular instructor evaluation process that not only incorporates student evaluations, but also requires regular classroom audits to ensure instructors are using adult learning principles and providing instruction that is effective and consistent with an approved

curriculum and lesson plan. Observations from this review should be shared with instructors on a regular basis.

8. Recommendation: SPD should re-assess its use of force training, ensuring it emphasizes critical-decision making skills. Such training should be required annually in-service, and also to supervisors, managers, and command staff.

As discussed above, in the limited SPD use of force training that DOJ was able to observe or review, emphasis was placed on tactics and on legal standards necessary to meet in order to justify the use of force. Although both of these subjects should certainly be addressed in a use of force training, SPD should consider integrating more training on critical decision-making – that is, on how officers should reason through when, whether, and how to use force.

SPD's use of force training for recruits at its Academy featured some content on the decision-making process. Specifically, there was a PowerPoint presentation slide and discussion on a decision-making model developed in the 1950's called the "OODA Loop." This decision-making model consists of four stages: Observe, Orient, Decide, and Act. This model contains some of the key elements in contemporary use of force decision-making models—but not all of them. In particular, the approach does not incorporate consideration of police powers, a department's own policy, and the continuous re-assessment that is central to updated approaches.

The Police Executive Research Forum (PERF) recommends that police agencies adopt a decision-making framework to help officers manage critical incidents.[125] PERF suggests this model is particularly useful for officers responding to calls that involve weapons other than firearms or dealing with people with special needs. Their Critical Decision-Making Model consists of five steps:

1. Collect information;
2. Assess the situation, threats and risks;
3. Consider police powers and agency policy;
4. Identify options and determine the best course of action, and;
5. Act, review and re-assess.

These steps are often used by specialized units like S.W.A.T. and likely by most officers as they approach a critical incident. The first and second steps are done while the officer is responding to the scene. Step 2 continues as they arrive on scene. Using this Model, the first question an officer should ask upon arriving at the scene is, "Do I need to take immediate action?" If yes, then the officer will cycle through the other steps in a matter of seconds. If no, then the officer can slow down his or her response and take more time.

These details are included simply to underscore the value in SPD not simply emphasizing physical maneuvers and minimum legal requirements regarding use of force but, instead, to position all use of force training as ways of continually building and enhancing dynamic strategic decision-making. PERF ultimately developed a training model and guide that they named

[125] *Guiding Principles on Use of Force*, *supra* note 24.

"ICAT" – Integrating Communications, Assessment, and Tactics. Whether SPD adopts this or some other approach, it needs to ensure that its use of force training focuses on decision-making, including the following:

- De-escalation and tactical distance and coverage as primary themes in training on use of force.
- Effective communication.
- Tactical training and mental health training.
- Realistic scenario-based training that is challenging and goes beyond "shoot – don't shoot."

Critical decision-making skills and abilities are perishable skills that need to be routinely refreshed as intensely as during the initial learning environment. A use of force situation is a low frequency but high risk event, especially with respect to firearms discharges and other serious force level. These are the very types of events that require dynamic learning methods for both a recruit and a 20-year veteran.

Because use of force also entails the highest risk to the officer and the public, DOJ recommends that SPD join other departments, like the Cleveland Division of Police, that commit, as a matter of policy, to providing use of force training annually.[126]

Additionally, we recommend that SPD should require not only that supervisors complete all force training required of officers each year but that they receive supervisor-specific training on the use of force. Supervisors must know how to break down the application of a decision-making model and what each phase should look like. They must know how to effectively communicate to their officers what worked and did not work in a constructive manner. Providing helpful and practical feedback is a learned and practiced skill.

OFFICER-INVOLVED SHOOTINGS INCIDENT REVIEW:

OBSERVATIONS AND RECOMMENDATIONS REGARDING INVESTIGATIONS

Investigations of officer-involved shootings are complex and difficult undertakings, and their conclusions are generally of public interest. Good investigations accomplish two goals: they result in the collection and safekeeping of all relevant evidence, and they organize that information in a manner that will enable decision makers to efficiently reach well-founded determinations. Following an investigation, law enforcement agencies must not only determine whether or not an officer-involved shooting was lawful or within policy, but also whether policies and training should be improved.

Officer-involved shooting investigations are governed by SPD's Discharge of Firearm policy, which details the respective duties of on-scene supervisors and members of the Homicide Unit. DGO 580.03 at 2-5. DOJ reviewed the files of every officer-involved shooting that occurred between April 2013 and March 2018 —a total of 18 incidents. Materials reviewed included

[126] *See* Cleveland Division of Police, General Police Order 2.01.03: Use of Force—General (January 1, 2018), p. 7. *Available at* http://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018General.pdf.

available witness interviews, interview summaries, photographs, videos, and medical reports, and incident reports. We also reviewed available summary materials created to aid SPD command staff in assessing each incident.

DOJ's review did not identify any material or egregious investigative errors or omissions. The investigative files we assessed generally spoke to thorough investigations that included interviews of relevant witnesses, and consideration of necessary issues or information. However, we also concluded that the quality of the investigations and supporting case files should be improved. These observations are discussed below.

PROMISING PRACTICES

SPD's investigations of officer-involved shootings are conducted in a professional manner. As mentioned above, our team found that, as a whole, all relevant witnesses were interviewed in most cases– including those who were directly involved, and those present nearby. Necessary physical evidence was also generally accounted for and examined, including the SPD-issued firearms involved in any given incident.

DOJ identified a gradual but clear improvement in investigative methods throughout the period reviewed, with the most thorough investigations being conducted most recently. Those investigations included verbatim transcripts of conducted interviews, and benefitted from available body camera or in-dash camera footage. SPD should continue to use technology to assist it in gathering information, and in organizing it in a fashion that allows officers, command staff, and other relevant parties to quickly digest the information and reach necessary decisions.

RECOMMENDATIONS FOR IMPROVEMENT

SPD should continue its efforts to improve its officer-involved shooting investigations, and the reviews that follow them. Effective investigations can help SPD assess what took place and also help improve officer and community safety by identifying policy, training, tactical, and other potential remedial needs. Our recommendations relate specifically to case file organization, investigative protocols, specialized training for officer -involved shooting investigators, and Internal Affairs investigations.

1. Recommendation: SPD should develop a manual that governs both administrative and criminal investigations of officer-involved shootings.

Officer-involved shooting investigations should reflect best practices and, formalized, clearly identified investigative strategies. SPD did not present for review comprehensive manuals that direct how to conduct administrative or criminal investigations of officer-involved shootings. In line with best practices, which emphasize the need for formal and standardized processes for internal investigations, SPD should develop such manuals. Specifically, the Bureau of Justice Assistance of the U.S. Department of Justice calls for agencies to develop manuals that dictate and describe the participants in investigative processes, including checklists that guide the

actions of on-scene and witness investigators.[127] Similarly, PERF calls for law enforcement agencies to have "clear, comprehensive, and current guidance on how to conduct an effective homicide investigation."[128]

Police departments that have employed specialized force investigation or "FIT" teams (as recommended and discussed *supra*), include both criminal and administrative investigators on the team specially trained to conduct these investigations.[129] Though both sets of investigations are run through the FIT, each set of investigators have separate purposes and separate protocols.[130]

At minimum, SPD should create separate guidance to direct administrative and criminal investigations. Each manual should clearly identify and describe separate roles and responsibilities for criminal and administrative investigators, and how and when information should be shared by the parallel investigations.

2. Recommendation: SPD should require either a specialized Force Investigation Team or its Internal Affairs Division investigate every officer-involved shooting to determine if policies and/or training were violated during the incident.

The discharge of a firearm by a police officer is governed both by law and department-specific policies. As such, national best practices call for a departmental review of every officer -involved shooting to determine whether criminal or administrative violations occurred. However, according to the information reviewed by our team, SPD does not currently conduct an administrative investigation of every officer-involved shooting. Instead, SPD's Management Review Team determines whether or not such an investigation will take place. This protocol is out of step with best practices nationwide and should be modified.[131]

We recommend that SPD either establish a Force Investigation Team, which includes an administrative investigation component (as discussed above), or, at minimum, that the Internal Affairs Division (IAD) conduct an administrative review of every officer -involved shooting to determine whether conduct during the incident was within SPD policy, and to inform decisions regarding related updates to policies. Officer-involved shootings are impactful and rare events

[127] Global Justice Information Sharing Initiative and Bureau of Justice Assistance, *DOJ, Considerations and Recommendations Regarding State and Local Officer-Involved Use-of-Force Investigations* (Aug. 2017). *Available at* https://it.ojp.gov/GIST/1202/Considerations-and-Recommendations-Regarding-State-and-Local-Officer-Involved-Use-of-Force-Investigations.
[128] Police Executive Research Foundation and the Bureau of Justice Assistance, *Promising Strategies for Strengthening Homicide Investigations* (Oct. 2018). *Available at* https://www.policeforum.org/assets/homicideinvestigations.pdf.
[129] *See e.g.* New Orleans Police Department Operations Manual, Chapter 1.3.2: Force Investigation Team (FIT) (April 1, 2018), pp. 1, 5-7. Baltimore Police Department, Policy 710: Level 3 Use of Force Investigations/Special Investigation Response Team (SIRT) (October 8, 2016), pp. 1, 3-4.
[130] *See e.g.* New Orleans Police Department, *id.* at 5-6 (listing responsibilities of the criminal and administrative sections of FIT, including during the investigation).
[131] *See e.g.* San Jose Police Department Duty Manual, Procedure L2607: Responsibility of Internal Affairs Unit (February 20, 2009) (Stating The IA Unit shall conduct an investigation when: (1) injury or death occurs from police use of deadly force, (2) an in-custody death occurs, (3) a citizen complaint is filed, or (4) a Department Initiated Investigation is begun.)

that merit close review and scrutiny, even when officers perform well and within policy. DOJ identified several instances in which officer-involved shootings appeared to be lawful, but were nevertheless characterized by poor tactics, potential policy violations, or facts that strongly suggested that SPD policy should be modified. Even if SPD chooses not to adopt a FIT model, IAD can and should conduct its administrative investigation concurrently with the Homicide Unit, with its investigators shadowing and participating in Homicide Unit-led interviews.

By conducting IAD investigations of officer-involved shootings, SPD can capitalize on opportunities to assess officer conduct both for the purposes of accountability and policy improvement. Doing so will not only allow SPD to identify potentially troubling acts or practices, but also avail itself of potentially more effective strategies that it can then propagate department-wide.

3. Recommendation: Detectives who are assigned to conduct investigations of officer-involved shootings should receive relevant training.

Our assessment of officer-involved shooting investigations identified a clear inconsistency in the quality of interviews conducted by SPD investigators. In some interviews, detectives relied on leading questions or failed to follow up on factual inconsistencies across witnesses. Failures of this type can make it more difficult to discover relevant facts, and can call into question the quality of the investigation as a whole.

SPD should work to ensure that detectives assigned to units that investigate officer-involved shootings receive advanced training in interview techniques, handling of electronic evidence, understanding forensic evidence, and conducting criminal or administrative investigations of officer-involved shootings.

SPD should also conduct a standardized assessment of detectives within IAD and the Homicide Unit, with a focus on determining the quality of their investigatory skills, knowledge, and abilities to effectively conduct internal investigations. SPD should then develop individualized training plans to address areas where improvement is needed.

4. Recommendation: SPD should standardize its investigative case files, and ensure that they include documents that will facilitate various kinds of reviews following the conclusion of the investigation.

Ideally, investigative records provide a clear and effective roadmap that chart the course of the inquiry and its results. Investigative files not only should include all available information, but should also provide reviewers of various types with the ability to understand and trust the integrity of the investigation. The electronic investigative files provided to us for review varied in their organization and contents, and lacked summary documents that traditionally allow command staff to quickly and adequately assess homicide or internal affairs investigations.

SPD should standardize the contents and organizational scheme of its investigative files. The electronic investigative files we reviewed were erratically organized, and lacked an overview table that identified the separate components of each case. In fact, each case varied in core

components – with some investigative files containing verbatim transcripts of interviews, and others lacking. Some investigative files contained raw footage of the incident in separate video files, while others only included edited versions embedded within power point presentations. Such variation across case files can make it difficult for reviewers to effectively review investigations for completeness or quality. To address this inconsistent practice, SPD should consider creating a standard investigative checklist that identifies necessary investigative steps and pieces of information that must be carried out for each investigation, and is contained within the investigatory file for quality assurance.

Each investigative file should also contain a case log that tracks the progress of the investigation. The log should be completed by either the lead detective or sergeant supervising the matter. It can list a chronology of investigative steps taken, the individuals involved, and the date and time the step was taken. A breakdown of this type can help ensure that necessary investigative steps are taken, and can also help reviewers of various types assess them.

Finally, an investigative file should also contain a narrative or written summary that describes the core actions taken by the investigative team and the facts that were established. The narrative or summary should be drafted by either the lead detective or supervising sergeant and should be sufficiently detailed to enable a member of the command staff, a prosecutor, or any other authorized reviewer to fully understand the officer-involved shooting. The summary should not replace any of the materials included in the investigative file.

5. Recommendation: SPD should conduct a formal after-action review, which includes supervisors and command staff, following every officer-involved shooting.

Officer-involved shootings implicate issues of law as well as a variety of other areas including training, relevant communications protocols, general procedures, use of equipment, etc. As such, departments consistently perform after-action reviews of such incidents to determine how their practices performed during the incident, and to modify them as needed. After action review should provide a comprehensive, systematic review of the incident to identify lessons learned in terms of policy, training, procedure, equipment, communications, and the like.

Currently, SPD's policy requires command staff to conduct a generalized review of officer-involved shootings following, or concurrent with, a determination of whether or not a criminal prosecution will take place. SPD's Firearm Discharge policy (GO 580.03) references, that "*if applicable*, a supervisor shall cause the completion of an after action report … per GO 532.13." However, the policy does not appear to have been updated since 1994, and our review of officer-involved shooting files did not evince that such debriefs were actually taking place.

We recommend that SPD conduct a formal after-action review within thirty to sixty days after every officer-involved shooting, and ideally on a routine basis for critical incidents (including incidents resolved short of using serious force).[132] This will enable SPD to promptly identify and

[132] *See* Owens, Emily, et, al, *Can You Build a Better Cop: Experimental Evidence on Supervision, Training, and Policing in the Community*, 17 Criminology & Public Policy, Issue 1 (2018) (discussing an experimental training program in which enrolled officers would debrief on incidents - including fairly benign events – with supervisors

address any issues identified or areas in need of improvement before problems reoccur. SPD should designate specific personnel to conduct these reviews, and for officer-involved shooting reviews to produce a formal report that identifies both practices that worked well and those that merit improvement. The personnel that SPD designates should include SPD command staff, and the report itself should be provided to the chain of command.

6. Recommendation: SPD should require supervisors and chain-of-command to review all use of force cases, including officer-involved shootings and serious uses of force.

The officer-involved shooting committee review referenced above, is not a formalized chain-of-command review of the merits or appropriateness of officer performance. It appears that that most serious use of force cases are analyzed and considered only by a very limited number of departmental personnel. SPD should require that the chain of command of the involved officer participate in the process of reviewing all use of force cases so that the actions and lessons learned are not narrowly siloed within the Department.

OFFICER-INVOLVED SHOOTINGS INCIDENT REVIEW:

OBSERVATIONS AND RECOMMENDATIONS REGARDING TACTICS

Use of force and officer-involved shooting incidents routinely occur in tense, quickly evolving situations. Officers must make split-second decisions that can have life or death consequences. For those reasons, policies and training that guide tactical decision-making before, during, and after the use of lethal force have an outsized importance.

In its review of tactics employed during officer-involved shootings, DOJ looked for practices that decreased the need for both less-than lethal and lethal uses of force, and resulted or could have resulted, in increased safety for those involved. In reviewing all of the officer-involved shootings that occurred during our five-year review period,[133] we observed a range of positive actions, decisions, and good tactics by officers. We also observed conduct, however, that should be examined by SPD to determine whether it should modify its policies or practices or provide remedial training.

PROMISING PRACTICES

In reviewing officer-involved shootings, we identified several recurring tactical decisions that likely increased the safety of the officers, subjects, and bystanders. Such tactics took the form of attempts to de-escalate potentially or actually tense situations. When successful, actions like

trained in tenets of procedural justice. Officers were asked not only about outcomes, but about thought processes and actions. Study found in the weeks following the experimental training, enrolled officers were less likely to resolve incidents with an arrest and less likely to be involved in use of force incidents.) *See* Appendix A, p. 6, for more detailed discussion of the Owens study.

[133] As noted above, our review did not include an evaluation of the shooting of Stephon Clark due to the pending criminal investigation.

these work to mitigate the need for force and, as a result, decrease the likelihood of officer and subject injuries.

SPD should continue to reinforce sound tactical decision-making using scenario-based training – a concept it has already shown commitment to by the existence and use of its "Tactical Village."[134] Continued refinement of, and training on, the foot pursuit policy – which SPD implemented in response to an officer-involved shooting – will also provide guidance on appropriate tactics.

RECOMMENDATIONS FOR IMPROVEMENT

Every incident that results in an officer-involved shooting should be rigorously mined for lessons that may be used to increase officer, subject, and bystander safety, and also to mitigate the need to use force in similar, future incidents if possible. Such assessments do not fixate on potential missteps by individual officers – instead, they identify tactical actions and trends that, if modified through policies and training, can result in positive changes. DOJ's review identified several troubling tactical areas that merit consideration by SPD. The following recommendations are designed to address these observations.

1. Recommendation: SPD should ensure its officers are effectively employing cover, distance, and time tactics to minimize the need for deadly force.

SPD's Discharge of Firearm policy allows officers to discharge a firearm when there is an "imminent danger," "immediate threat," or "imminent risk" of death or serious bodily injury. (GO 580.03 at 1.) Officers can sometimes make tactical decisions that make it more difficult for an imminent threat to materialize. Such strategies are often referred to under the broad umbrella of "cover, distance, and time" – factors that can contribute to de-escalating a potentially dangerous situation, and minimizing the need for lethal force.[135] Officers can obtain the benefits of cover, distance, and time by constantly evaluating the situations they find themselves in, and positioning themselves in a manner that places distance and cover between themselves and actual or developing danger. Doing so may provide needed time, which can then lead to minimizing the need for lethal force.

As noted above, in reviewing officer-involved shooting incidents, we observed instances where officers appropriately used these strategies. However, we identified several instances during which stronger cover, distance, and time tactics may have decreased the need to use lethal force. In one particular incident, a SPD officer arrived on the scene of a developing encounter. Several officers had already arrived, and had situated themselves behind objects that provided them with cover. One officer had already deployed a less-than-lethal use of force option. The arriving SPD officer did not seek cover, and immediately engaged the subject. Soon after, this officer used lethal force, which did not immediately incapacitate the subject. While seeking cover and taking

[134] SPD's training academy not only includes classrooms and mat rooms (for defensive tactics instruction), but also a warehouse space with rooms or areas designed to represent various settings officers are likely to find themselves in, such as a bar setting and an apartment building.
[135] *See Guiding Principles on Use of Force*, *supra* note 24 at 54.

time to assess the situation may have led to a similar outcome, it may have provided other options.

SPD should ensure that its policies, protocols, and training continually reinforce the importance of cover, distance, and time. By impressing on officers the value of slowing down, assessing situations, and acting accordingly, SPD may mitigate the need for certain uses of lethal force, and diminish related harm to officers and community members. Reviewing every significant use of force will help SPD to identify lapses and provide prompt remediation to help improve officer and community safety.

2. Recommendation: SPD should assess its practices and provide officers with guidance on the discharge of firearms in situations that may endanger bystanders and other officers.

The kinds of imminent threats that necessitate the discharge of a firearm by police officers are often chaotic. The incidents DOJ reviewed unfolded in a myriad of situations – including in dense residential areas, in front of single family homes and apartment buildings, near high-traffic intersections, and in sparsely populated areas. In several incidents, the backdrop to the discharge of firearms by officers was extremely high risk, including instances of crossfire.

No officer can control the environment in which he or she is forced to discharge a firearm. However, officers can be provided with clear guidance on how to determine whether or not a discharge is reasonable, given the potential risks to bystanders that may exist. SPD should work to ensure policies and training are sufficient to provide such guidance for its officers.

3. Recommendation: SPD should ensure its training prepares officers to encounter and detain individuals in a manner that decreases the need for deadly force applications.

The officer-involved shooting incidents we reviewed arose from a variety of circumstances including law enforcement activity where there was no known criminal violation, community complaints, and individuals experiencing a crisis (mental health or substance abuse related).

SPD should assess its training to ensure that officers are faced with dynamic and varied scenarios requiring them to determine how best to approach and detain individuals in a manner that will mitigate the need for force. Officers should be prepared to understand how to handle situations in which individuals become irate, especially if those individuals are in their custody.

It is also worth noting that in a significant number of incidents, the individual upon whom lethal force was used was perceived (by the officer) as suffering from mental illness. We recognize the majority of these incidents occurred prior to SPD's implementation of required Crisis Intervention Training (CIT). Requiring all officers to undergo 40 hours of CIT was an important step forward, but SPD should continue to consider how to refine and improve their training, consistent with recommendations made in our use of force training section, including emphasizing critical-decision making skills and integrating rigorous scenario-based training.

SPD should also consider innovative approaches to collecting more information on how officers are using force in the field when confronted with individuals who may be suffering from mental illness, drug addiction, or any other conditions that can cause them to behave erratically. The Seattle Police Department, for example, which has become a national leader in successfully using Crisis Intervention Training and related strategies, implemented a form called the "Crisis Template" to capture data on every police contact made with an individual in crisis, and were able to ascertain that in a three month period, officers used force in only two percent of incidents.[136] The data also demonstrated that officers who had undergone the 40 hour CIT and additional 8 hour advanced training had responded to 71 percent of those incidents, indicating that the reforms being made had a tangible effect on outcomes.[137]

PERSONNEL COMPLAINT PROCEDURES

Trust is the foundation of an effective relationship between the police and the community, and a robust and well-functioning complaint system is paramount in establishing that trust. Questions of accountability often arise in the context of complaints made by members of the public involving employees of departments. How departments choose to handle such complaints has an effect on both its officers and individuals who come in contact with the police.

A lack of transparency and standardization in the complaint intake, investigation and review process can cause a loss of faith, mistrust, and negative impressions of an agency both internally and externally. If community members do not feel as if they are treated with respect and their concerns acknowledged and addressed, they may choose to disengage from the process altogether. If officers lack clarity as to how formal and informal complaints are investigated and handled, it can cause anxiety and a perception of unfair and disparate treatment, eroding morale. From a management perspective, the lack of a centralized information source for complaints makes it more difficult for supervisors to track performance and for the department as a whole to evaluate officers. It also amounts to a missed opportunity for and agency to collect systemic observations on the effects of policy and training in the field.[138]

In assessing SPD's personnel complaint system, DOJ reviewed SPD's Internal Investigation Manual (RM 220.01), Internal Affairs Division Daily Procedures, and the General Order on its Early Intervention Program (GO 570.06) and Disciplinary Actions (GO 220.05). The team also reviewed publicly available information, including SPD's website, and the website of the Office of Safety Public Accountability (OPSA). The team also had the opportunity to conduct a high-level review of formal complaint investigation files (in hard copy) and inquiry investigation entries (on the electronic database at Internal Affairs known as IA Pro), but a more comprehensive review of complaint files is ongoing.

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[136] *Guiding Principles on Use of Force*, *supra* note 24 at 57-58. *See also* "Seattle Police Department crisis intervention training saves lives," *Seattle Times*, April 2, 2017. *Available at* https://www.seattletimes.com/opinion/editorials/seattle-police-department-crisis-intervention-training-saves-lives/.

[137] *Guiding Principles on Use of Force*, *Id.* at p. 58.

[138] *See* Appendix A, p. 9 (study of community complaint allegations across eight cities demonstrated a number of trends, including that a small percentage of officers accounted for a majority of complaints, and that use of force and discourtesy were the most common complaint allegations).

PROMISING PRACTICES

SPD has recognized the importance of accessibility in the complaint process. Its website has a page devoted to the personnel complaint procedure, including how to make a complaint, SPD's obligations under the law as to complaints, a description of the types of investigation that may result from a complaint (formal or informal), and what to expect generally at the conclusion of the complaint process.

SPD's guidance to the public on how to make a complaint is succinct and clear. It conveys that complaints may be made in a variety of ways, including telephonically, in writing or in-person at the Internal Affairs Division. SPD also provides for the electronic submission of a complaint via email, and specifies the type of information to include in the email, such as the individual's name and phone number, and a description of the event. The availability of this information is a key step in communicating that the responsibility to hear citizen complaints is one SPD takes seriously.

With regard to SPD guidance to officers, a review of the Internal Investigations Manual (RM 220.01) reveals it to be thorough in its description of key terms, how a complaint can be received, and the formal investigative process.[139] It also provides sufficient notice to officers on the administrative review process and the discipline process. Such information is critical in telegraphing to officers what to expect from a potentially anxiety-producing experience.

RECOMMENDATIONS FOR IMPROVEMENT

SPD's system of complaint intake, tracking, classification, assignment, and investigation should be centralized and standardized in a way to ensure compliance with SPD's obligations under the law, and provide meaningful information to officers, the Department, and the community. The recommendations that follow primarily involve revisions to RM 220.01 and seek to establish Internal Affairs as the hub for complaint management.

1. Recommendation: SPD should adopt a general order that outlines its complaint process and requires all personnel to comply with the process or be subject to potential disciplinary action.

The policy which outlines SPD's complaint process, Internal Reference Manual 220.01, is just that – a Reference Manual (RM), as opposed to a General Order (GO). SPD Reference Manuals are procedural directives that provide guidance on how to perform specific tasks or functions. SPD General Orders are official Department policy, which govern various aspects of its operations.

SPD should adopt a general order that specifically addresses citizen complaint intake, classification, investigation, and review to ensure Department-wide compliance and

[139]The Daily Procedures and Blue Team Instruction Manual provide more granular guidance to officers on how to use SPD technology systems to carry out the duties, roles, and responsibilities set forth in the Internal Investigation Manual.

accountability. Any such order should incorporate the relevant recommendations below, and include how SPD will communicate investigation updates and outcomes to the complainant.

SPD should also ensure via its policy and information provided to the public, that the community and SPD personnel understand that any and all complaints from the public should be accepted. In particularly, SPD should make explicit that complaints may be made anonymously. And given Sacramento's diversity, SPD should also ensure that the public understands that complaints may be submitted in various languages.

2. Recommendation: SPD should establish a specific intake process that requires all complaints be accepted and forwarded to Internal Affairs for processing, and Internal Affairs should serve as the repository for all complaints, regardless of origin or level of severity.

While SPD requires that all complaints be accepted, the Manual states that the complaint may be referred to *either* the employee's supervisor *or* Internal Affairs. (RM 220.01, § B.2(a.).) This provides for too much discretion in how a personnel complaint is handled in the first instance.

Instead, SPD should require that all complaints be referred to Internal Affairs for processing. SPD policy should describe in detail the roles, responsibilities, and expectations for all departmental personnel upon receiving a complaint – including when and how such complaints shall be forwarded to Internal Affairs.

3. Recommendation: SPD should establish a complaint classification system, that among other things, accounts for the seriousness of the offense.

RM 220.01 identifies four types of complaint classifications: (1) inquiries, (2) Office of Public Safety Accountability (OPSA) complaints, (3) Citizen complaints, and (4) Department complaints. An inquiry is defined as an initial allegation of misconduct against an employee where an informal investigation may occur and: (1) the complaining party is satisfied with the outcome (i.e., the action taken by the supervisor); (2) the complaining party is requesting a mere clarification of policy or procedure; (3) the alleged misconduct, even if true, would not constitute a violation of law, policy or procedure; (4) the complaining party withdraws the allegation, refuses to cooperate, or becomes unavailable; or (5) the complaining party makes an allegation that lacks any arguable basis or merit based on the initial investigation and/or was made for the purpose of harassment. (*See* RM 220.01 pp. 2-3.)

Allegations of misconduct that are classified as inquiries or OPSA complaints are investigated informally, and do not trigger the same tracking and documentation requirements as citizen or department complaints, which are investigated formally. Citizen and Department complaints must be documented on a Citizen Department Complaint Form (SPD 332) and must be forwarded by an employee's chain of command to Internal Affairs. Internal Affairs then enters that information into a central database known as IA Pro, and that information is linked to the officer who is the subject of the complaint. After a formal investigation takes place, one of four possible findings is rendered by the Chief of Police, and the complainant is required to be informed of the disposition of the investigation. Citizen and Department Complaints are also

required to be forwarded to OPSA to determine whether they will conduct an audit of the investigation.

Inquiries, which trigger no such obligation, may either be resolved at the "watch level" (meaning by the employee's supervisor) or by Internal Affairs if so directed. Inquiries received by Internal Affairs (either because the intake was done by Internal Affairs or the allegations were referred to Internal Affairs by OPSA) are entered into the IA Pro database. But inquiries received by an employee's supervisor (in-person, telephonically or otherwise) are not entered into IA Pro, unless that employee's supervisor chooses to refer the complaint to Internal Affairs.[140] This creates a universe of complaints that are handled informally and never tracked by Internal Affairs. Consequently, there is no single, reliable, and central repository for complaints made by the community.

Further, pursuant to current SPD policy, *any* employee receiving a complaint may determine the classification of the complaint. Instead, SPD should require that Internal Affairs log and track any and all instances in which a civilian's allegations, if true, would constitute a violation of SPD policy, regardless of the nature of the complaint. Even if the complaint does not merit a formal investigation, the complaint should be logged and tracked.

Once all complaints are tracked, SPD should consider categorizing complaints by allegation. Many departments have Internal Affairs policies that detail how complaints should be classified, based on the allegations contained therein. For example, some departments sub-categorize administrative complaints into personnel complaints (alleged misconduct by an employee) and service complaints (problems in provisions of service not linked to a particular employee's conduct, such as too long response times).[141] Personnel complaints can be further categorized to indicate the type of misconduct, such as excessive use of force, and racial bias.[142] If implemented, SPD should provide more guidance as to how each is to be investigated, including appropriate timelines.

4. Recommendation: SPD should require Internal Affairs to assign and review complaint investigations.

In addition to permitting the receiver of the complaint the discretion to determine the classification of a complaint, current SPD policy allows an employee's supervisor *or* Internal Affairs to determine whether a Citizen or Departmental complaint investigation will be conducted by Internal Affairs or at the watch level. Additionally, Citizen or Department

[140] Even when an Inquiry is assigned a case number in IA Pro, SPD does not link them to specific officers.
[141] *See e.g.* Oakland Police Departmental General Order M-03, Complaints Against Departmental Personnel or Procedures, Section II.E. and II.F. (December 22, 2017). *Available at* http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak069158.pdf.
[142] *See e.g.* New Orleans Police Department Operations Manual, Chapter 52.1.1 Misconduct Complaint and Investigation (March 18, 2018)(setting forth the complaint classification process, including the subcategorization of administrative (non-use of force; non-criminal) complaints into (1) serious misconduct; (2) other (non-serious) misconduct; (3) allegations eligible for Negotiated Settlement; and (4) allegations eligible for Community-Police Mediation.). *Available at* https://www.nola.gov/getattachment/NOPD/Policies/Chapter-52-1-1-Misconduct-Intake-and-Complaint-Investigation-EFFECTIVE-3-18-18.pdf/.

complaints may be reduced to inquiries, if, after a preliminary investigation, the investigator determines one of the criteria for inquiry classification is met. (RM 220.01, § C.7.)

Internal Affairs, rather than a complaint-receiving supervisor, should assess whether investigations should be handled at the watch level (such as in cases involving lower level allegations). Even if a particular investigation is assigned to the watch level, Internal Affairs should still bear responsibility for ensuring the investigation is fair, thorough, and timely.[143] A supervisor should not have the discretion to classify or reduce a citizen complaint to an inquiry before review, analysis, and determination by Internal Affairs.

Internal Affairs should be required to investigate complaints containing allegations of use of force, potential bias or discrimination, criminal conduct, and other serious misconduct.[144] This will ensure that the most significant and complex cases are handled by experienced and skilled investigators whose role is to conduct objective, comprehensive and timely administrative investigations.

With respect to complaint investigations, Internal Affairs should provide clear expectations as to the rigor and comprehensiveness it expects – including investigations done at the watch level - by implementing standards. These standards should include requirements regarding case formatting, substantive conduct of the investigation, and training on conducting personnel-related investigations, including proper interviewing techniques and peace officer rights under state and federal law and applicable collective bargaining agreements.

5. Recommendation: SPD should develop its Early Intervention Program.

Along with directives (policies and protocols) and internal investigations, effective early identification and intervention systems can be important tools for managing personnel and promoting accountability. Data gleaned from early identification and intervention systems serve to promote ethical and professional police practices, manage risk and liability, and enable police departments to meaningfully assess the performance of employees and supervisors across units, shifts, ranks, and organizational components.[145]

The design and operation of an early identification and intervention system can vary but, at base, should consist of a computerized database to collect, maintain, integrate and retrieve certain information – both on an officer level, and department-wide. The type of data collected should include, among other information:[146]

- All uses of force

[143] *See* Appendix A, p. 9 (study found that citizen complaints were 39% less likely to be sustained when investigated solely by department command-level supervisors rather than an internal affairs).
[144] *See e.g.* New Orleans Police Department Operations Manual, *supra* note 142. Baltimore Police Department Draft Policy 306 Complaint Intake and Classification Process (October 31, 2018). *Available at* https://www.baltimorepolice.org/306-draft-complaint-intake-and-classification-process.
[145] *See* Appendix A, p. 9 (discussing research that integrating citizen complaint allegations into an EIS may identify officers who are more prone to engage in misconduct, as measured by civil litigation claims).
[146] *See e.g. United States v. Commonwealth of Puerto Rico and Puerto Rico Police Department*, 3:12-cv-2039 (July 17, 2013), Agreement for the Sustainable Reform of the Puerto Rico Police Department. 56-57.

- Injuries to, and deaths of persons in custody
- All complaints and their dispositions
- All disciplinary action taken against employees
- All non-punitive corrective action required of employees
- All awards and commendations received by employees
- Training history for each employee
- Demographic data for each civilian involved in a use of force sufficient to assess bias.

Data regarding vehicle pursuits and accidents, arrests, and stops and searches can also provide important information to supervisors and managers regarding officer performance and risk management issues.

SPD has taken an important first step in creating a General Order devoted to the establishment of an Early Intervention Program (EIP). GO 570.06 defines SPD's EIP as, "A non-disciplinary, proactive system intended to enhance awareness of potential employee misconduct and to meet the needs of the community and the Department's organizational values." The GO also sets forth basic information regarding what incidents are tracked as part of the EIP and the chain of review.

SPD, however, has not yet implemented an EIP program. To its credit, SPD recognizes that it does not currently have an operational EIP in place and is working towards this goal at the time of the drafting of this report.

As part of implementing an EIP program, we recommend that SPD revise its GO to align with best practices on the implementation of an EIP that contains the kind of data (examples of which are set forth above) that will enable it to be an effective tool for the Department to evaluate individual officers and to identify trends and issues system-wide. SPD should then designate an individual or individuals – most appropriately housed within its Professional Standards Unit, to manage and maintain it.

6. Recommendation: SPD should enter into a memorandum of understanding with OPSA regarding its role and responsibilities.

OPSA, which is described in more detail above (*see* Section III.C), is ostensibly an entity whose main responsibility is to independently accept, monitor and investigate complaints of misconduct.[147] As such, SPD should encourage community members to contact OPSA and on its web page addressing personnel complaints, should: (1) describe what OPSA is; and (2) identify OPSA as a separate avenue for making personnel complaints.[148]

[147] *See* OPSA Frequently Asked Questions, https://www.cityofsacramento.org/-/media/Corporate/Files/CMO/Public-Safety-Accountability/FAQs-OPSA18.pdf?la=en.

[148] Currently, OPSA is not explicitly mentioned on SPD's personnel complaint web page. Instead, there is a link to its more detailed citizen complaint brochure, and on the second page of that brochure there is a text box briefly describing OPSA, stating that complaints about employees may be made to OPSA, and including OPSA's contact information. *See* https://www.cityofsacramento.org/-/media/Corporate/Files/Police/Contact/SPD-745-Citizen-Complaint-Procedure-FINAL-8-31-17.pdf?la=en.

SPD should consider entering into a memorandum of understanding (MOU) with OPSA regarding what role OPSA will have in the complaint process. Such an MOU should reflect the revisions SPD makes to its complaint intake and classification system, including how it tracks and logs complaints. Currently, complaints made to OPSA are generally classified as inquiries and are thus informally investigated.

From the public reports available on its website, OPSA appears to be classifying complaints by allegation-type, as opposed to by complaint-type. This can cause confusion in terms of what numbers OPSA is reporting; what is, and is not, being investigated formally; and how the complaints received by OPSA are being resolved. OPSA and SPD would benefit from adopting the same classification and categorization scheme moving forward to provide for consistency, particularly in terms of public reporting.

The extent of OPSA's responsibility should also be clear in any MOU. OPSA currently refers the community complaints it receives from the public to SPD for intake, processing, and investigation. Per RM 220.01, Internal Affairs "shall" consult with OPSA prior to closing any complaints referred by OPSA. (RM 220.01, p. 4.) OPSA does retain some authority to audit formal Citizen and Department Complaint investigations. (*Id.*) If OPSA chooses to audit an investigation, they may make recommendations on the disposition of the complaint and any employee discipline decided upon by the Chief. (*Id.* at 8.) If SPD or OPSA contemplate further responsibilities for OPSA to bolster its role as an independent entity in the accountability process, a MOU could be the appropriate vehicle by which to do so.

COMMUNITY ENGAGEMENT AND TRANSPARENCY

As noted previously, a police agency's effectiveness is, in large part, predicated on building relationships of trust with all segments of the community it serves. Once established, trust between law enforcement and community members enables consistent and constructive engagement, which in turn facilitates efforts to address and prevent crime. During its ongoing review, DOJ met with a diverse cross-section of community members and organizations in an effort to understand perceptions of SPD's use of force-related policies and practices. In wide-ranging and open conversations, community stakeholders shared both appreciation and frustration with SPD.

DOJ met with a varied set of stakeholders throughout Sacramento. We discussed our work and sought input from organizations representing the African American, Latino/a, indigent, homeless, and lesbian, gay, bisexual, transgender, and queer communities, as well as sworn SPD officers, and SPD union representatives, among others. We also met with individuals who routinely interact and work with SPD, including staff of the Sacramento County Public Defender's Office and private attorneys. We thank each organization and each individual that took the time and energy to meet with us.

PROMISING PRACTICES

In describing the Department, SPD materials identify its guiding mission as working "in partnership with the Community to protect life and property, solve neighborhood problems, and

enhance the quality of life in [its] City."[149] During our meetings, stakeholders repeatedly praised past community engagement efforts by SPD, including the Sacramento Peace Walks program. Since 2017, SPD has joined with several community leaders and organizations and participated in regularly scheduled walks in the Oak Park neighborhood. The walks are designed to prevent violence by creating traditions that help develop strong relationships between residents, community organizations, and government agencies. Meeting participants also spoke positively of specific interactions they had with individual SPD officers, both in and out of uniform.

SPD has previously created opportunities to engage in structured conversations with community members. In late 2017, the Department held four "Town Hall Meetings" throughout the city. Community members were able to inform developing decisions regarding Department priorities and police practices, and to express their opinions regarding the Department. SPD also recently worked in partnership with Sacramento city government and the U.S. Department of Justice's Community Relations Service to hold a series of community engagement and problem-solving meetings. Participants in these meetings were able to provide feedback on SPD policies and practices. They also shared concerns regarding public safety issues.

Stakeholders also expressed a strong appreciation for statistics and information that SPD has previously made public. SPD's website currently provides the public with detailed information regarding particular officer-involved shootings, deaths in custody, incidents of public interest, its policies and manuals, and information regarding past community outreach efforts. [150]

RECOMMENDATIONS FOR IMPROVEMENT

The great majority of community members with whom we met expressed a desire for opportunities to better understand and more routinely engage with SPD on issues related to use of force. The recommendations identified below arise from these conversations, and are geared towards ensuring a mutual understanding between the Department and the communities it serves.

Several stakeholder groups and individuals we met with expressed feeling mistreated and disrespected by SPD officers during routine encounters. Many community members highlighted instances during which SPD officers approached them rather than explaining the reason for the contact, instead immediately asked whether or not the individuals were on "probation or parole" – a question that presumes a history of unlawful conduct, and which can lead to a search. Others reported feeling that SPD officers stopped them not because of a suspicion of illegal activity, but solely because of the neighborhood they found themselves in, or their apparent race or ethnicity. Such impressions can damage community relationships with police, and can make it more difficult for police officers to do their work.

Some community members, including sworn officers and their representatives expressed a lack of trust in SPD and its officer accountability systems. Several individuals we spoke to shared particular stories involving allegedly problematic behavior, but expressed an unwillingness to

[149] Sacramento Police Department, *About the Sacramento Police Department*. *Available at* https://www.cityofsacramento.org/Police/About-SPD.
[150]Sacramento Police Department, *Transparency*. *Available at* http://www.cityofsacramento.org/Police/Transparency.

file complaints with SPD because they felt as if the complaints would not be dealt with fairly or appropriately. SPD should work to address these impressions by providing the public with relevant information about its complaint system and, whenever possible, providing statistics regarding its accountability efforts. SPD officers and their representatives expressed skepticism of certain disciplinary outcomes, viewing them as unfair or improperly motivated by political considerations. SPD management should consider how to better communicate to the rank-and-file, to the extent possible given restrictions on what can and cannot be disclose, reasons for particular outcomes or actions.

1. Recommendation: SPD should develop and implement a community outreach plan that includes regularly scheduled and broadly accessible meetings with Sacramento residents and community-based organizations.

SPD should routinely and consistently reach out to Sacramento residents to ensure that its methods and services reflect the needs of the communities it serves. During our stakeholder meetings, DOJ consistently received requests from the community to meet with Department representatives. Community members cited previous engagement experiences, including meetings with SPD officers and command staff, as positive and constructive. However, DOJ also received complaints relating to the sporadic nature of such opportunities, conveying an impression in the community that such outreach usually followed, and was linked to, high-profile use of force events. While outreach in such instances is critical, community members across the city expressed an interest in more regular and sustained opportunities to meet with the Department.

SPD should create, publish, and implement a long-term community outreach plan that identifies accessible opportunities for community members and representatives from community based organizations to engage with varying components of the Department. The plan should be a product of collaboration between SPD and its community, provide for events of various types and sizes, and be held in locations that will be accessible to residents throughout Sacramento. The events should also range in size from large community "town hall"-type events, to smaller, more intimate gatherings, and involve representatives of various Department units, including Patrol, Internal Affairs, and specialized units. SPD should also consider convening events on particular issues, like use of force. By providing for this variety, SPD and community members will be able to inform one another in various environments on a variety of topics, increasing the likelihood of constructive conversations.

2. Recommendation: SPD should strive for greater transparency by consistently releasing information regarding use of force and other related topics.

Community members at various meetings routinely expressed the desire to more fully understand the Department, its policies, and its practices. Community members also praised the City and SPD's policy regarding the release of body worn camera videos, and positively cited previous information disclosures made by the Department. However, DOJ received requests relating to use of force statistics, training curriculum and schedules, accountability and officer discipline, among other types of data.

As of the date of this report, SPD has posted statistics on use of force from 2015 through 2017, including information related to types of force used, and relevant demographics regarding those involved in the use of force. With an understanding that certain information is not eligible for release, SPD should work together with community stakeholders to identify information of sufficient interest to the public beyond what is already released, and then to determine whether or not such information is eligible for release. Once relevant and releasable information is identified, SPD should develop and implement a plan for the public release of such information. Whenever possible, the information should be released on a routine basis, and made available in useful and easily accessed electronic formats.

CONCLUSION

The officer-involved shooting of Stephon Clark was a tragedy for his family and friends, and an indelible event not only for the involved officers and witnesses, but for the entire Sacramento community. The Sacramento Police Department's willingness to analyze not only the incident but also its force-related policies and systems in an effort to attain safer outcomes in the future is encouraging, as is the community's willingness to participate in this process. This partnership can help create a police culture that demonstrates that respectful policing and effective policing go hand in hand. Throughout this review we observed reasonableness and good faith exhibited by all stakeholders, including community members, union officials, police personnel, and city leadership. We encourage these stakeholders to continue working together as the Sacramento Police Department and community move forward.

NEXT STEPS

Sacramento Police Department has the leadership, community, resources, and personnel in place to make it a leading example of not just constitutional but community-oriented police practices. DOJ's work is ongoing and we will continue our review of use of force by SPD, citizen inquiries and complaints, and policies, practices, and systems relating to the prevention of bias, recruitment and hiring, data management, and discipline. SPD policies, practices, and systems related to use of force including the prevention of bias, recruitment and hiring, data management, and discipline. During the next phase of this process, as the Sacramento Police Department implements the recommendations contained within this report, it will need to consider the overarching issues that attach to all of the identified objectives: the need for clarity, consistency, guidance, and rigor in the messaging and operationalizing of the Department's mission and core values, the value of improved information collection and analysis, the importance of communication and transparency both internally and externally, and the imperative of robust oversight and accountability.

INDEX OF RECOMMENDATIONS

USE OF FORCE POLICIES

- **Recommendation 1**: SPD's general Use of Force policy (GO 580.02) should more clearly define and describe to officers when force is and is not authorized.
- **Recommendation 2**: SPD should better define the applicable legal standard of objective reasonableness.
- **Recommendation 3**: SPD's general policy statement in its Use of Force policy should more expressly connect the sanctity of human life with use of force.
- **Recommendation 4**: The Use of Force policy should better define and explain the requirement that force be used only when necessary.
- **Recommendation 5**: SPD should refine and expand its treatment of de-escalation in its core force policy.
- **Recommendation 6**: SPD policy should affirm the importance of proportionality
- **Recommendation 7**: Consistent with the core concepts of de-escalation, necessity, and proportionality, SPD should consider expressly requiring that officers exhaust all other means reasonably available to them under the circumstances, before using deadly force.
- **Recommendation 8**: In its general Use of Force policy, SPD should require that, when feasible under the circumstances, officers provide verbal warnings to subjects before using force, whether deadly or less-lethal force.
- **Recommendation 9**: SPD should amend its policy to provide more guidance on foot pursuits.
- **Recommendation 10**: SPD policy should specifically prohibit various problematic types of force.
    - Recommendation 10.1.: SPD should continue to prohibit chokeholds, and further prohibit carotid restraints and other maneuvers designed to, or may foreseeably result in, cutting off blood or oxygen to a subject's head.
    - Recommendation 10.2.: SPD should prohibit the use of techniques and/or transport that involves a substantial risk of positional asphyxia.
    - Recommendation 10.3.: SPD should prohibit shooting *at* or *from* moving vehicles.
    - Recommendation 10.4.: SPD should prohibit specific types of force that are rarely ever consistent with policy.
- **Recommendation 11**: SPD should have policies governing each type of force instrument that it authorizes officers to carry.

  - Recommendation 11.1.: SPD should expressly require that all officers carry, and be trained on, less-lethal instruments.
  - Recommendation 11.2: SPD should consider revising its firearms policy into a policy addressing the use of lethal force.
  - Recommendation 11.3.: SPD's general Use of Force policy and its Discharge of Firearms policy should better address issues involving exhibiting and pointing firearms.
  - Recommendation 11.4.: SPD's firearms policy should include provisions that better ensure the safety of other officers and bystanders.
  - Recommendation 11.5.: SPD's Conducted Energy Device (CED) policy should limit use of the CED to three, standard five-second cycles, with individual cycles separately justified in use of force reporting.
  - Recommendation 11.6.: SPD should consider eliminating the use of CEDs in "drive stun" mode.
  - Recommendation 11.7.: SPD's policy should prohibit the use of a CED on handcuffed subjects.
  - Recommendation 11.8.: SPD should modify its canine-related policies so that its canines are deployed in a manner consistent with "find and bark" rather than "find and bite" approaches.

- **Recommendation 12**: SPD should more clearly articulate its requirement that officers render and/or request medical assistance when necessary following a use of force.
- **Recommendation 13**: SPD should ensure that officers report potential misconduct related to force to Internal Affairs and/or a supervisor.
- **Recommendation 14**: SPD policy should strengthen its requirement that officers intervene when they observe other officers violating its Use of Force policy.

USE OF FORCE REPORTING AND INVESTIGATION

- **Recommendation 1**: SPD should create a general order dedicated to use of force reporting and investigations.
- **Recommendation 2**: SPD should categorize reportable use of force into levels (i.e., Level 1, 2, and 3) based on seriousness and specify associated roles and responsibilities of involved officers, supervisors, and investigative personnel at each level with respect to reporting and review.
- **Recommendation 3**: Non-reportable levels of force should be clearly identified and described in the general order.
- **Recommendation 4**: SPD should specify the reporting, investigation, and review requirements for each level of force, including reporting requirements for the involved

and witness officers, the responsibilities of the investigating supervisor, criminal and administrative investigator responsibilities, and review requirements.

  - Recommendation 4.1: Officers who use reportable force should be required to complete a Force Statement, as should officers who witnessed or were at the scene of a Level 2 or Level 3 use of force. All Force Statements should be entered into Blue Team.
  - Recommendation 4.2: Level 1 uses of reportable force may, under ordinary circumstances, be reviewed at the district or unit commander level. Any administrative investigation opened as a result of a Level 1 use of force should be forwarded to Internal Affairs for assignment and review.
  - Recommendation 4.3: Level 2 uses of force may be reviewed by the district or unit commander but should also be forwarded to Internal Affairs for administrative investigation assignment and review.

- **Recommendation 5**: SPD should establish a multidisciplinary team to conduct both the criminal and administrative investigations of Level 3 Reportable Force Incidents.
- **Recommendation 6**: SPD should establish a Use of Force Review Board charged with reviewing all Level 3 Reportable Uses of Force, all uses of force otherwise investigated by FIT, and any other matters referred to them by Internal Affairs or the Chief of Police.
- **Recommendation 7**: The general order should specify time frames for the reporting, investigation, and review of reportable use of force.
- **Recommendation 8**: A general order on reporting and investigating use of force should reflect officer wellness and safety concerns.
- **Recommendation 9**: SPD should identify the nature and extent of the use of force information it will release to the public.
- **Recommendation 10**: SPD should consider entering into a Memorandum of Understanding with an outside agency regarding their potential role in the future use of force investigations and SPD improvements around serious use of force.

USE OF FORCE TRAINING

- **Recommendation 1**: SPD should place greater emphasis on teaching officers to have a guardian mindset.
- **Recommendation 2**: SPD should ensure that its Training Academy staff and the content of all training initiatives reflect and embody the Department's mission, core values and policies.
- **Recommendation 3**: SPD should establish a Curriculum Design Committee that reviews and approves all curricula, lesson plans and training materials (including the use of videos).

- **Recommendation 4**: SPD should find meaningful ways to incorporate members of local colleges and universities, community-based organizations, and community members into their curriculum and lesson plan development process and instructional activities.
- **Recommendation 5**: SPD should establish a Training Committee responsible for assessing the effectiveness of the curricula against current policies, as well as the integration of use of force scenario-based training, guardian philosophy and adult learning theory.
- **Recommendation 6**: SPD should have clear guidelines for selecting training instructors, with prior performance history being a significant factor in the selection criteria.
    - **Recommendation 6.1.:** Instructors should be actively involved in the development and discussion on key policies.
    - **Recommendation 6.2.**: SPD should regularly convene its FTOs, and its force-related training instructors, to ensure consistency and high-quality training.
- **Recommendation 7**: SPD should evaluate the quality and effectiveness of its training, including evaluating student learning, and conducting formal instructor evaluation and classroom audits.
- **Recommendation 8**: SPD should re-assess its use of force training, ensuring it emphasizes critical-decision making skills. Such training should be required annually in-service, and also to supervisors, managers and command staff.

OFFICER-INVOLVED SHOOTINGS INCIDENT REVIEW – INVESTIGATIONS

- **Recommendation 1**: SPD should develop a manual that governs both administrative and criminal investigations of officer-involved shootings.
- **Recommendation 2**: SPD should have its Internal Affairs Division investigate every officer-involved shooting to determine if policies and/or training were violated during the incident.
- **Recommendation 3**: Detectives who are assigned to conduct investigations of officer-involved shootings should receive relevant training.
- **Recommendation 4**: SPD should standardize its investigative case files, and ensure that they include documents that will facilitate various kinds of reviews following the conclusion of the investigation.
- **Recommendation 5**: SPD should conduct a formal after-action review, which includes supervisors and command staff, following every officer-involved shooting.
- **Recommendation 6**: SPD should require supervisors and chain-of-command to review all use of force cases, including officer-involved shootings and serious use of force.

OFFICER-INVOLVED SHOOTINGS INCIDENT REVIEW – TACTICS

- **Recommendation 1**: SPD should ensure its officers are effectively employing cover, distance, and time tactics to minimize the need for deadly force.
- **Recommendation 2**: SPD should assess its practices and provide officers with guidance on the discharge of firearms in situations that may endanger bystanders and other officers.
- **Recommendation 3**: SPD should ensure its training prepares officers to encounter and detain individuals in a manner that decreases the need for deadly force applications.

PERSONNEL COMPLAINT PROCEDURE

- **Recommendation 1**: SPD should adopt a general order that outlines its complaint process and requires all personnel to comply with the process or be subject to potential disciplinary action.
- **Recommendation 2**: SPD should establish a specific intake process that requires all complaints be accepted and forwarded to Internal Affairs for processing, and Internal Affairs should serve as the repository for all complaints, regardless of origin or level of severity.
- **Recommendation 3**: SPD should establish a complaint classification system, that among other things, accounts for the seriousness of the offense.
- **Recommendation 4**: SPD should require Internal Affairs to assign and review complaint investigations.
- **Recommendation 5**: SPD should develop its Early Intervention Program.
- **Recommendation 6**: SPD should enter into a memorandum of understanding with OPSA regarding its role and responsibilities.

STAKEHOLDER OUTREACH

- **Recommendation 1:** SPD should develop and implement a community outreach plan that includes regularly scheduled and broadly accessible meetings with Sacramento residents.
- **Recommendation 2:** SPD should strive for greater transparency by consistently releasing information regarding use of force and other related topics.

APPENDIX A: EVIDENCE-BASED RESEARCH FOR THE RECOMMENDATIONS TO THE SACRAMENTO POLICE DEPARTMENT

ABOUT THIS SECTION OF THE REPORT

While research regarding law enforcement policies and practices is limited in many areas, this appendix provides a review of available research that supports recommendations made to SPD. Where applicable, we provide additional research recommendations related to areas of review, transparency, and oversight to assist SPD to best collect and use data to evaluate areas of agency practices.

The purpose of this section is intentionally narrowly tailored in scope to evaluate the available research related to recommendations discussed in the body of the report. Therefore, this discussion is not meant to be exhaustive and does not include a review of best or promising practices in the field of law enforcement. Many of these practices are discussed in the body of the report along with relevant citations.

USE OF FORCE POLICIES

RESEARCH ON RECOMMENDATIONS:

We recommend that the SPD update its use of force policies related to less-lethal and deadly force so that they are consistent with current best practices, are more comprehensive, and provide officers with clearer guidance on use of force. In addition to the sources discussed in the report, we can infer further support for these recommendations from research that explores connections between administrative policy and use of force.

Available research on the topic of use of force policies indicates that administrative policies restricting officer discretion on use of force contribute to a decrease in force incidents (Fyfe 1982; Jennings and Rubado 2017; Seattle Police Monitor 2017; Tennenbaum 1994; White 2001). For instance, a study analyzing 4,904 Firearms Discharge/Assault reports from the New York City Police Department dating from January 1971 to December 1975 found a reduction in police shootings (Fyfe 1982, pp. 277-279). The researcher attributed this reduction to a policy implemented in August of 1972. This policy requires officers to use only the minimum amount of force necessary; prohibits the use of warning shots; prohibits the discharge of a firearm if it places innocent bystanders at risk, and prohibits the discharge of a firearm at or from a moving vehicle (Fyfe 1982, p. 262).

Similarly, another study reviewed the Philadelphia Police Department's shooting data from two distinct periods, 1970-1978 and 1987-1992, to explore whether a policy implemented in 1980 that limited officer discretion in the use of deadly force reduced the number of police shootings (White 2000). This study found that shootings decreased by 58%; however, the author cautioned

that a restrictive force policy coupled with leadership who enforced the policy mattered a great deal in reducing the use of deadly force among officers (White 2001, p. 146).

More restrictive policies on less-lethal uses of force appear to similarly reduce the amount of force incidents. For example, researchers studying TASER use among officers in the Dallas Police Department found a significant drop in TASER usage after departmental policy was updated (Bishopp et al. 2015). This update in policy only allowed officers to use TASERs against citizens who displayed "active aggression" (Bishopp et al. 2015, p. 731). Exploring the relationship between less-lethal policies and incidents among three police agencies, researchers similarly found that the agency with the most restrictive policy on less-lethal force, the Charlotte-Mecklenburg Police Department (CMPD), also had fewer force incidents (Terrill & Paoline 2017). Researchers, however, also note that officers employed by CMPD often criticized the restrictiveness of the agency's policy, particularly with respect to how high the TASER was placed within the agency's use of force matrix (Terrill & Paoline 2017, p. 210; Terrill & Paoline 2013, p. 1127).

After implementing reform mandated by a United States Department of Justice (U.S. DOJ) consent decree, the Seattle Police Department experienced an almost 11% decrease in force incidents between July 2014 and October 2016. The Seattle Police Department experienced the greatest decline in the use of the baton - a tool that the U.S. DOJ found Seattle Police Department officers overly-relied on (Seattle Police Monitor 2017, pp. 30-36). In a further qualitative analysis of use of force cases, the Seattle Police Monitor found that officers used force that was necessary, proportional, and objectively reasonable in 99.27% of cases reviewed (Seattle Police Monitor 2017, p. 74).

Based on existing research, we can infer that any measures to clarify, provide more guidance, and restrict unnecessary types of force would lead to safer practices for officers and citizens without a detrimental effect on public safety. Researchers were able to determine no observed increase in officer or civilian injury or officer death with decreased use of force (e.g. Fyfe 1982, Smith 2001, Seattle Police Monitor 2017). Additional studies have also noted no observed decrease in policing activity, sometimes referred to as "de-policing," or crime increase after agencies enacted police reform. For example, a study of the Los Angeles Police Department while under a U.S. DOJ consent decree found that mandated reform did not have a negative impact on the "…quantity and quality of enforcement activity" (Stone, Foglesong, and Cole 2009, pp. 30-31). In Washington, D.C., updated police policies appear to have no effect on crime rates, and crime rates in Cincinnati remained stable despite a 46% decline in use of force by Cincinnati police officers (Chanin 2015, pp. 177-180). Pittsburg experienced a sharp decline in crime rates after the Pittsburg Police Department implemented reform measures (Chanin 2015, p. 174). Therefore, available research does not indicate an association between more stringent reform policies and negative public safety outcomes, such as an increase in injuries to officers or civilians, increase in crime, or an increase in "de-policing."

Moreover, research on use of force demonstrate the importance of conducting studies to better understand how police officers leverage force (e.g. COPS Office, 2016; Fachner & Carter 2015; Goff et al. 2016; Paoline & Terrill 2007; Stewart et al. 2012; Terrill & Mastrofski 2002; Terrill & Reisig 2003). In the past SPD has partnered with research organizations to conduct studies on vehicle stops, hot spots policing, and officer attitudes toward research in policing (Greenwald

2001; Lamberth 2008; Telep et al. 2012; Lum et al. 2012). SPD should continue its commitment to collaborative research that can assist in improving its operations. Collaborative research must include members of the SPD, including rank-and-file officers, because of their first-hand knowledge and expertise regarding law enforcement activities. SPD should also consider including members of the community because they can offer additional insight into policing concerns and work with the team to devise research strategies.

Continued research has many benefits for both the department and the wider community. First, ongoing analysis could evaluate current practices and offer recommendations for how the agency could continue to improve current operations through more training, policy revisions, increased community engagement, or other interventions.

Second, empirical research could increase agency accountability and transparency by providing community members with high quality data and analyses evaluating use of force within the current year and across multiple years. As discussed in the report, this second aspect—increasing accountability and transparency by providing more data on use of force—is a desire communicated by Sacramento residents from diverse backgrounds during community stakeholder meetings conducted by DOJ. Residents want to be more informed about police practices. This desire offers SPD further opportunities for proactive community engagement. To SPD's credit, the organization now provides aggregated use of force statistics on its public website.[1] Additionally, SPD provides aggregated vehicle stop data on a monthly basis[2] and is committed to releasing open data on hate crimes.[3] Recommendations for further research outlined below focus on the design, implementation, and dissemination of research.

Recommendations for Further Research:

- Recommendation 1: SPD should conduct quantitative and qualitative data analyses to identify the nature and circumstances of when and how officers use force.
    - All force required to be reported should be included in the analysis.
    - Analyses should also evaluate whether racial, ethnic, or other demographic disparities exist in when and how force is used.
    - SPD should seek out opportunities to collaborate with academic institutions, research organizations, and community stakeholders to facilitate research design and implementation.
    - Findings from analyses should inform police practices, policies, organizational structure, and training when appropriate.
- Recommendation 2: SPD should publicly release an annual report that describes analyses and key findings related to use of force.

[1] Statistics can be found here: https://www.cityofsacramento.org/Police/Transparency/Use-Of-Force-Statistics.
[2] Aggregated SPD vehicle stop data can be found here: http://data.cityofsacramento.org/datasets/sacramento-police-vehicle-stop-data.
[3] National Police Foundation, Law Enforcement Agencies Across the U.S. Standing Up to Hate, https://www.policefoundation.org/54-law-enforcement-agencies-across-the-u-s-standing-up-to-hate-crimes/.

- Recommendation 3: SPD should provide de-identified use of force data on their official agency website to encourage transparency and further data analysis.[4]
    - At a minimum, this data should be released on a quarterly basis.
    - Data should include:
        - Date and time of incident
        - Officer characteristics
        - Citizen characteristics
        - Zip code[5] location where incident occurred
        - Service type
        - Level of resistance offered by the civilian
        - Force response offered by the officer
        - Officer injury
        - Citizen injury

USE OF FORCE REPORTING AND INVESTIGATION

RESEARCH ON RECOMMENDATIONS:

DOJ's recommendations related to investigations center on updating policies related to reporting and investigating use of force and improving mechanisms for internal oversight of use of force incidents. Although research on this topic is limited, the recommendations made are intuitive and may provide additional benefits to employee satisfaction and organizational culture.

As discussed in this report, updating categories of reportable force into three levels is something the U.S. DOJ has implemented in more recent consent decrees, notably for the Baltimore, Chicago, New Orleans, and Seattle Police Departments. Since implementing this three level reporting system under the U.S. DOJ consent decree, the Seattle Police Monitor has produced a report analyzing reportable use of force within the Seattle Police Department. The monitor found a 60% decrease in moderate to higher levels of force, which they attribute in part to the rigorous reporting and oversight requirements implemented due to the consent decree that ensure uniform reporting of all force incidents (Seattle Police Monitor 2017, p. 32).

More research into other areas of internal review and oversight is needed. However, a research-based review of deadly force training indicates why agencies should consider a more expansive internal review process, such as a Use of Force Review Board as recommended in our report. Researchers found that 73% of firearms training staff in large municipal police departments did not have a role in police shooting investigations (Morrison and Garner 2011, p. 349). Moreover,

[4] For an example of what publically released de-identified data should look like, *see* New Orleans Police Department's Use of Force dataset: https://data.nola.gov/Public-Safety-and-Preparedness/NOPD-Use-of-Force-Incidents/9mnw-mbde. Additionally, the National Police Foundation recently released a five-part best practice guide for developing open datasets: https://www.policefoundation.org/publication/police-data-initiative-best-practices-guide-5-part-series/.

[5] Zip code in lieu of address should be provided to protect the identity of citizens involved in the incident in the event that an incident occurred at a residential location. SPD may also elect to provide the police beat where each incident occurred.

only 39% of firearms training staff had access to investigative records (Morrison and Garner 2011, p. 349). Researchers concluded that allowing training staff to participate in administrative investigations could have mutual benefits for training and oversight. Trainers could improve instruction on tactics and decision-making so that officers are better prepared in high-risk encounters. In turn, instructors can highlight tactical issues and contribute to departmental recommendations on how to best address such issues.

An additional, more experimental, study considers how police departments can implement an internal procedural justice philosophy in the supervisory review of officer performance (Owens et al. 2018). During a 6-month period, researchers randomly assigned a select number of employees from the Seattle Police Department to receive an experimental supervisory review. This experimental review was non-punitive, and instead encouraged rank-and-file officers to reflect on their more routine encounters with the wider community. Researchers hypothesized that this review could increase a sense of procedural fairness among agency employees, reduce negative encounters with the public, and increase community perceptions of a more procedurally just police department. Researchers found that while employees who received the intervention remained as active in the community as officers who did not, they were less likely to be involved in use of force incidents and were able to resolve incidents by other means than making an arrest (Owens et al. 2018, pp. 43, 73). Researchers concluded that these findings demonstrate how applying procedural justice within a police department could improve police-community relations (Owens et al. 2018, pp. 73-75). Related to SPD, this study indicates how supervisors can experiment with a debriefing process that allows rank-and-file to reflect on routine interactions with civilians. As the study highlights, efforts to increase procedural justice within the department may have additional benefits for the wider community.

Recommendations for Further Research:

- Recommendation 4: If SPD decides to update reporting requirements as suggested by DOJ, then analyses on use of force should also monitor and evaluate whether officers are following newly implemented uniform reporting protocols.
    - There is an expectation that within the first year of implementing new reporting requirements SPD will have to provide further clarification to its policies or training to address any issues that arise.

Use Of Force Training

Research on Recommendations:

The independent review team's recommendations for training largely fall into two categories:

1. Ensure that the organizational perspective toward the community appropriately blends a guardian mindset necessary for the crime fighting approach to protecting the community.
2. Implementing a rigorous review process that evaluates both the course material used by instructors and the quality of instruction.

Law enforcement experts highlight the benefits of a guardian mindset in police training as a way to better prepare officers to protect and serve communities (Birzer 2003; Rahr and Rice 2015; President's Task Force 2015). These benefits include increasing the critical thinking and decision-making skills of officers, reinforcing the principles of dignity and respect in officer-civilian interactions, and building community trust in law enforcement (Rahr and Rice 2015, pp. 4-5; President's Task Force 2015, p. 11).

Much of the research on training outcomes evaluates officer attitudes after receiving newer forms of training. This body of research demonstrates officer preference for an engaged classroom environment that provides instruction on real-world scenarios (Oliva and Compton 2010). Additional studies on officer attitudes after receiving problem-based training indicate that officers believed that training improved their critical thinking and decision-making skills (Werth 2011; Vander Kooi and Palmer 2014). In addition to providing insight into officer attitudes towards training received, these studies highlight the importance of receiving and analyzing feedback from officers to assess the quality of course materials and instruction.

As discussed elsewhere in this report, many Sacramento community members expressed a clear desire to be involved in the development and instruction of police training. The President's Task Force on 21st Century Policing also discussed community involvement in the development and instruction of training (President's Task Force 2015, p. 54). While we cannot provide references to specific research studies on the topic of community involvement in police training, we can speak broadly on the feedback we received during stakeholder meetings with community members and organizations. Community concerns regarding training fell broadly into two realms:

1. Limited ability for community representatives with relevant knowledge, training, and/or experience to participate in police training.
2. Limited information about the training SPD receives regarding use of force, mental illness, implicit bias and cultural awareness, homelessness, and LGBTQ issues.

SPD may be missing opportunities to strengthen aspects of current curriculum while also increasing community trust. As discussed in this report, our recommendation for SPD to establish a Curriculum Design Committee and find additional meaningful ways to incorporate academics, community-based organizations, and community members into curriculum design is intended to strengthen SPD's current process for developing, reviewing, approving, and delivering course content. Involving people and organizations with relevant knowledge and experience may provide an additional level of oversight and vetting of course curriculum and instruction that can prove invaluable to SPD. Additionally, community participants can serve as advocates who can educate others on the training mechanisms that exist within SPD, clarifying misconceptions about police training in the process.

Recommendations for Further Research

The three recommendations for further research mirror the recommendations made in the body of our report:

- Recommendation 5: SPD should regularly audit course curriculum to ensure that it reflects the core mission and values of the agency.
- Recommendation 6: SPD should regularly audit class instruction to ensure that the material covered follows the approved lesson plan.
- Recommendation 7: SPD should analyze course evaluations to improve instruction or course materials.

PERSONNEL COMPLAINT PROCEDURE

RESEARCH ON RECOMMENDATIONS:

Our recommendations largely focuses on ways SPD can build and improve on their current complaint system and expand upon internal and external mechanisms for oversight by developing its early intervention program and further memorializing its relationship with OPSA via a MOU.

The limited research regarding complaints and external oversight indicate promising practices that further support DOJ's recommendations to SPD. Researchers evaluating 5,500 citizen complaint allegations across eight cities had three findings: a small number of officers accounted for the majority of complaints, use of force and discourtesy were the most frequent categories of complaints, and few complaints were sustained (Terrill and Ingram 2016, p. 172). Relatedly, researchers found that citizen complaints were 39% less likely to be sustained when investigated solely by department command-level supervisors rather than an internal affairs (IA) unit (Terrill and Ingram 2016, p. 173). However, when an external oversight board reviewed outcome decisions made by a police agency, the board was 78% more likely to sustain the original complaint when compared to agencies with no external oversight review (Terrill and Ingram 2016, p. 173).

Related to SPD, these findings suggest that requiring the IA unit to investigate or manage all complaints may provide a higher level of impartiality to the review of citizen complaints. Additionally, having a structure for external oversight that can conduct an independent review of complaint dispositions may increase the number of sustained findings.

Research analyzing the effectiveness of early intervention (EI) systems is limited. However, one working paper indicates that integrating citizen complaint allegations into an EI system may identify officers who are more prone to engage in misconduct, as measured by civil rights litigation (Rozema and Schanzenbach 2018). Researchers analyzed over 50,000 civilian allegations of misconduct by Chicago police officers between 2009 and 2014. Additionally, researchers incorporated lawsuit payments made by the City of Chicago on behalf of officers. Researchers found that integrating civilian allegations into an EI system could be a useful means for identifying officers who are at a higher risk of engaging in serious misconduct and therefore would benefit from targeted intervention (Rozema and Schanzenbach 2018, p. 33). While an EI system should not solely rely on citizen complaints to identify officers in need of additional support, this research indicates that citizen complaints of police misconduct, in particular, may be a reliable measure for inclusion into such an intervention system.

While available research indicates that multiple indicators are best for an EI system, there are additional considerations that administrators may need to address (Carton et al.).[6] As indicated in the above paragraph, researchers caution that any EI system should not have an overreliance on citizen complaints (Worden et al. 2013, p. 430; Lersch et al. 2006). Additionally, specific types of officer assignments may be more prone to use justifiable use of force than other assignments (Worden et al. 2013, p. 430-431; Lersch et al. 2006, p. 61). To control for this issue, departments should develop appropriate force thresholds that take into account officer activity, as measured by the rate of arrests, citations and traffic stops.[7]

A good EI system depends on timely data related to officer performance, continued database maintenance, appropriate and timely identification of officers in need of further support, and regular evaluations of post-intervention outcomes (Shjarback 2015, pp. 9-10). SPD should work closely with department analysts and researchers who can assist in creating and maintaining an EI system. SPD should also seek out the assistance of other law enforcement agencies to learn how other departments developed their respective system. Moreover, SPD should expect to conduct regular evaluations of the effectiveness of their EI system and make adjustments where necessary to improve the identification of officers at a higher risk for an adverse event. SPD should also expect to conduct regular evaluations of post-intervention outcomes with an eye toward making improvements to intervention methods where necessary.[8]

RECOMMENDATIONS FOR FURTHER RESEARCH

- Recommendation 8: SPD should conduct annual analysis of its civilian complaints.
    - After implementation of a new civilian complaint system that includes more systematic and centralized tracking as well as outreach to community members, SPD should expect that its complaints will increase.
    - As indicated by research, annual analysis of civilian complaints of police misconduct may also help to develop and improve internal mechanisms for any early intervention system SPD decides to implement.
- Recommendation 9: SPD should work with agency analysts and researchers in their development of an early intervention system that appropriately and accurately identifies officers in need of further support.
- Recommendation 10: After implementation of an EI system, SPD should regularly evaluate its system to ensure effectiveness for identifying officers in need of further support.

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[6] *See also* Recommendation: SPD should develop its Early Intervention Program, beginning on page 71 of this report.

[7] Refer to pages 71-72 of this report for additional data and variables that should be included in an EI System.

[8] SPD may wish to reach out to Chief Barb West of the Chicago Police Department (CPD). Chief West recently gave a presentation entitled "Early Intervention Systems in Chicago" at a California Policy Lab conference in Los Angeles on November 30, 2018. Like many agencies, CPD has worked closely with researchers in their development of an EI system. Moreover, many police departments have joined an initiative at the University of Chicago to develop EI systems: https://dsapp.uchicago.edu/projects/public-safety/early-warning-and-intervention-systems-for-police-departments/. Although DOJ cannot independently vouch for this initiative, SPD may consider participating.

- Future evaluations should also assess post-intervention outcomes to identify effective methods for intervention and areas of intervention in need of improvement.

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APPENDIX B: INDEX OF RECOMMENDATIONS FOR FURTHER RESEARCH

USE OF FORCE-RELATED POLICIES

- Recommendation 1: SPD should conduct quantitative and qualitative data analyses to identify the nature and circumstances of when and how officers use force.
    - All force required to be reported should be included in the analysis.
    - Analyses should also evaluate whether racial, ethnic, or other demographic disparities exist in when and how force is used.
    - SPD should seek out opportunities to collaborate with academic institutions, research organizations, and community stakeholders to facilitate research design and implementation.
    - Findings from analyses should inform police practices, policies, organizational structure, and training when appropriate.
- Recommendation 2: SPD should publically release an annual report that describes analyses and key findings related to use of force.
- Recommendation 3: SPD should provide de-identified use of force data on their official agency website to encourage transparency and further data analysis.[9]
    - At a minimum, this data should be released on a quarterly basis.
    - Data should include:
        - Date and time of incident
        - Officer characteristics
        - Citizen characteristics
        - Zip code[10] location where incident occurred
        - Service type
        - Level of resistance offered by the civilian
        - Force response offered by the officer
        - Officer injury
        - Citizen injury

USE OF FORCE REPORTING AND INVESTIGATION

- Recommendation 4: If SPD decides to update reporting requirements as suggested by DOJ, then analyses on use of force should also monitor and evaluate whether officers are following newly implemented uniform reporting protocols.

[9] For an example of what publically released de-identified data should look like, *see* New Orleans Police Department's Use of Force dataset: https://data.nola.gov/Public-Safety-and-Preparedness/NOPD-Use-of-Force-Incidents/9mnw-mbde. Additionally, the National Police Foundation recently released a five-part best practice guide for developing open datasets: https://www.policefoundation.org/publication/police-data-initiative-best-practices-guide-5-part-series/.

[10] Zip code in lieu of address should be provided to protect the identity of citizens involved in the incident in the event that an incident occurred at a residential location.

- There is an expectation that within the first year of implementing new reporting requirements SPD will have to provide further clarification to its policies or training to address any issues that arise.

Use of Force Training

- Recommendation 5: SPD should regularly audit course curriculum to ensure that it reflects the core mission and values of the agency.
- Recommendation 6: SPD should regularly audit class instruction to ensure that the material covered follows the approved lesson plan.
- Recommendation 7: SPD should analyze course evaluations to improve instruction or course materials.

Personnel Complaint Procedure

- Recommendation 8: SPD should conduct annual analysis of its civilian complaints.
  - After implementation of a new civilian complaint system that includes more systematic and centralized tracking as well as outreach to community members, SPD should expect that its complaints will increase.
  - As indicated by research, annual analysis of civilian complaints of police misconduct may also help to develop and improve internal mechanisms for any early intervention system SPD decides to implement.
- Recommendation 9: SPD should work with agency analysts and researchers in their development of an early intervention system that appropriately and accurately identifies officers in need of further support.
- Recommendation 10: After implementation of an EI system, SPD should regularly evaluate its system to ensure effectiveness for identifying officers in need of further support.
  - Future evaluations should also assess post-intervention outcomes to identify effective methods for intervention and areas of intervention in need of improvement.