

The following is an excerpt from the “Civilian Complaints” section of the 2021 RIPA Annual Report which includes:

- Civilian Complaint Form Review and Matrix: pp. 129 – 134
- Early Intervention System: pp. 134 – 142

“Our department has a Civilian Panel that conducts a parallel investigation on all civilian complaints...”

*“We have [had] an Early Warning System for over 15 years to help identify potential issues before they become systemic or catastrophic”
- Riverside Police*

Wave 2 Civilian Complaint Form Review

In its 2019 report, the Board made recommendations for best practices for civilian complaint procedures and policies.²⁷⁷ In its 2020 report, the Board built upon this review and made recommendations regarding civilian complaint forms after reviewing literature regarding best practices for civilian complaint procedures and forms.²⁷⁸ Through this lens, the Board conducted an initial review of the Wave 1 agencies’ civilian complaint forms in its 2020 report; the Board is now extending that review to the Wave 2 agencies.²⁷⁹

Long Beach Police Department: The Long Beach Police Department (Long Beach Police) accepts complaints: (1) in person, (2) by telephone, (3) by mail, or (4) by e-mail. On the agency’s public website, a member of the public can find the civilian complaint process and form.²⁸⁰ The civilian complaint form and process are available in English, Spanish, Khmer, and Tagalog. Long Beach Police follows the City of Long Beach’s Language Access Policy passed in 2018. The policy provides that while Spanish-speaking residents numerically qualify for services under state law, Long Beach also has a “substantial number of limited English speaking Cambodian and Filipino residents” for whom services and materials should be provided in their spoken languages.²⁸¹ The current complaint forms were translated by a contract professional services translator in 2013. The agency permits third-party complaints and anonymous complaints. Long Beach Police also provides a contact list that includes their Citizen’s Police Complaint Commission (CPC), as well as other local, state, and federal offices from which a complainant can seek assistance if they feel their complaint was not properly investigated.

²⁷⁷ See Racial and Identity Profiling Advisory Board Report (2019) pp. 41-44
<<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2019.pdf>> (as of Dec. 14, 2020).

²⁷⁸ See Racial and Identity Profiling Advisory Board Report (2020) p. 58-80
<<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf>> (as of Dec. 14, 2020).

²⁷⁹ See Appendix G for the Wave 2 civilian complaint forms.

²⁸⁰ The complaint form and procedures can be located here: Long Beach Police Department, Citizen Complaint Procedure
<<http://www.longbeach.gov/police/contact-us/citizen-complaint-procedure/>> (as of Dec. 14, 2020).

²⁸¹ City of Long Beach, Language Access Policy (2018) <<http://www.longbeach.gov/globalassets/health/media-library/documents/healthy-living/office-of-equity/language-access-resolution-and-policy-update-2018---english>> (as of Dec. 14, 2020).

Oakland Police Department: Civilian complaints regarding the Oakland Police Department (Oakland Police) personnel can be submitted to either the agency’s Internal Affairs Division²⁸² or to the Citizens’ Police Review Agency (CPRA).²⁸³ Complaints filed directly with Oakland Police’s Internal Affairs Division will be investigated by the Internal Affairs Division, whereas those submitted to the CPRA will be investigated by the CPRA. The agency reports that Internal Affairs and CPRA investigate concurrent complaints. It is unclear from their websites whether there is a difference in the type of complaints each entity investigates. The Internal Affairs Division accepts complaints: (1) by phone, (2) by mail, (3) by e-mail, (4) by fax or (5) in person out in the field, at their main office, or any of the other designated locations. The CPRA receives complaints: (1) online, (2) by mail, or (3) by fax. The online civilian complaint form is only available in English. A PDF version of the complaint form is available in English, Spanish, Chinese, or Vietnamese. A description of the civilian complaint process is only available with the CPRA’s English online submission form. Unlike the PDF form, the online version allows complainants to “decline to state” certain demographic and contact information such as date of birth or phone number. Both the PDF and online complaint forms provide an open narrative space for the complainant to share what they would like to happen as a result of the investigation. Through an online portal, a complainant can track the status of the investigation of their complaint. Oakland Police reports it also accepts anonymous or third party complaints.

San Jose Police Department: The San Jose Police Department’s (San Jose Police) Internal Affairs Unit accepts civilian complaints: (1) by phone, (2) by letter, (3) by e-mail, (4) by fax, or (5) online. Complaints can be submitted to the agency itself, the Internal Affairs Unit, or the Office of the Independent Police Auditor. Regardless of who the complaint is submitted to, it will be investigated by the Internal Affairs Unit. The online complaint form is available in English, Spanish, and Vietnamese;²⁸⁴ San Jose Police’s standard documents are translated into these three languages due to the prevalence of these languages in their community. If another language is required, its Duty Manual requires vital documents to be translated by an on-duty certified interpreter or a contracted translation service. The complaint form and other documents are generally translated by sworn personnel who are certified as interpreters or San Jose Police’s contracted translation services. The form uses language from Cal. Penal Code section 148.6 language and describes the complaint process. The online form asks for any witnesses and their contact information. The form also specifically asks the complainant to designate whether the complaint involves race or identity profiling concerns. Anyone can file a complaint and it can be submitted anonymously. San Jose Police offers a voluntary Mediation Program for alleged misconduct deemed minor or where there is a misunderstanding about enforcement action, neglect of duty, or police procedure.

²⁸² The online complaint form and procedures can be located here: City of Oakland, Report Police Misconduct <<https://www.oaklandca.gov/services/report-police-misconduct>> (as of Dec. 14, 2020).

²⁸³ The online complaint form and procedures can be located here: <https://apps.oaklandca.gov/CPRA/?_ga=2.235015489.1909800277.1607078516-1525498134.1584741107> (as of Dec. 14, 2020).

²⁸⁴ The online complaint form and procedures can be located here: San Jose Police Department, Internal Affairs <<https://www.sjpd.org/about-us/organization/office-of-the-chief-of-police/internal-affairs>> (as of Dec. 14, 2020).

Sacramento County Sheriff's Office: The Sacramento County Sheriff's Office (Sacramento County Sheriff) accepts complaints: (1) online, (2) in person, (3) by phone, or (4) in writing. All complaints are investigated by the Internal Affairs Bureau. The online complaint form is available in English and can be translated into other languages by using the Google translate button located at top right hand corner of the website.²⁸⁵ The online form includes nearly verbatim language from Cal. Penal Code section 148.6 but provides a check box to mark if the complainant wishes to remain anonymous. The agency reports that a complainant may e-mail video or photos associated with the incident to Internal Affairs at the e-mail listed. There is no information attached to this online form about the civilian complaint process except for how to contact the Internal Affairs unit. Complaints that are submitted in other languages are translated by an employee who is fluent in the language or by a county-contracted translation service. In addition to the online complaint form, the agency has a PDF, or printed, version of the civilian complaint form that complainants can access in-person and includes Cal. Penal Code section 148.6 language. Unlike the online version, the PDF form makes clear that a third party can submit complaints, which is a Board recommendation, and provides a space for information of an attorney or representative to be included.

Sacramento Police Department: The Sacramento Police Department (Sacramento Police) takes civilian complaints: (1) by phone, (2) in writing, (3) in person, (4) online or (5) by e-mail. The agency's website includes information on the personnel complaint process in English. At the very bottom of the webpage, there is a Google translate button that allows complainants to translate the complaint procedures into other languages. While the complaint procedures reference Cal. Penal Code section 148.6, the Sacramento Police removed quoted language from the code on their webpage that could be seen as dissuading someone from reporting misconduct. Sacramento Police implemented an online complaint form in November 2020.²⁸⁶ The form is in English but can also be translated using the Google translate feature at the bottom of the webpage. A separate City of Sacramento body, the Office of Public Safety Accountability (OPSA), has an online complaint form.²⁸⁷ OPSA's online complaint form is not directly linked on the Sacramento Police's website. A complainant can learn of OPSA and its online complaint form by downloading the Sacramento Police's "Complaint Procedure Brochure." OPSA receives complaints: (1) online, (2) by phone, or (3) in person at their office. The online complaint form is available in English but can also be translated by using the Google translate button at the very bottom of the webpage. On August 1, 2019, Sacramento Police updated its civilian complaint procedures based upon recommendations made by Cal DOJ. As of July 2020, Sacramento Police's Internal Affairs Division is working with the new incoming OPSA director to enter into an MOU regarding OPSA's role and responsibilities with respect to

²⁸⁵ The online complaint form can be located here: Sacramento County Sheriff's Office, Professional Standards <https://www.sacsheriff.com/pages/professional_standards_division.php> (as of Dec. 14, 2020).

²⁸⁶ A link to the online complaint form and procedures can be located here: City of Sacramento Police Department, Complaint Form <<https://www.cityofsacramento.org/Police/Contact/Personnel-Complaint/Personnel-Complaint-Form>> (as of Dec. 14, 2020).

²⁸⁷ A link to the online complaint form and procedures can be located here: City of Sacramento Office of Public Safety Accountability (OPSA), Public Safety Complaint Form <<https://www.cityofsacramento.org/OPSA/complaint-process/online-complaint>> (as of Dec. 14, 2020).

complaints, including steps to either link the OPSA complaint form on Sacramento Police's website or duplicate the form on Sacramento Police's website.

Fresno Police Department: The Fresno Police Department (Fresno Police) accepts civilian complaints: (1) online, (2) in person, (3) by mail, and (4) by phone. These methods are outlined in the agency's "Complaint Procedures" brochure. The brochure states that complaint procedures help civilians, the community, and the police. Fresno Police determines the language translations needed for their complaint form and brochure by conducting a four-factor analysis outlined in their Limited English Proficiency Services policy. Documents are then translated by certified employees or an outside agency if no employees are certified in that language. The printed civilian complaint form and brochure are available in English, Hmong, and Spanish. For those languages that do not meet the four-factor threshold, the agency attempts to provide meaningful access for LEP individuals attempting to make a complaint through other translation resources like a language line or a certified bilingual employee. The online civilian complaint form is available in English only.²⁸⁸ Before someone can access the online form, they must click a box acknowledging that they read and understand an advisory that is nearly verbatim language from Cal. Penal Code section 148.6. This language is also included in the printed version of the form and requires a signature. The form provides a phone number to call if the complainant's contact information changes. Additionally, the form asks if photos were taken of any injuries suffered and the name of the person who took the photos. The form also asks if the complaint was filed with any other City of Fresno department or outside agency. If the complaint has been filed with another department, the form requests the date of such report and the person contacted. Lastly, the form has a specific section for racial and identity profiling complaints. The print version of the form is nearly identical to the online version, with the exception of including a mailing address. The printed forms were last revised December 2018. If a complaint is submitted in person at the station, the complainant receives a "complaint receipt" which provides the case and event number and the date on which the complaint was received. Fresno Police accepts anonymous and third-party complaints to the extent that sufficient information is provided. Details of the civilian complaint process are outlined in the brochure, which is not available with the online complaint form.

The City of Fresno also has an Office of Independent Review (Fresno OIR), which participates in the Fresno Police Department's civilian complaint process. Members of the public can submit their complaints to the Fresno OIR or the Fresno Police Department; if the complaint is submitted to the Fresno OIR, it is routed to the department. Regardless of where the complaint is submitted, the Fresno OIR has complete access to the department's Internal Affairs and reviews all civilian complaints.²⁸⁹ Based on the complaints received and reviewed, the Fresno OIR produces quarterly reports that indicate whether it concurs with the disposition of each civilian complaint investigation. The reports also include a specific section on biased based

²⁸⁸ The online version of the complaint form can be located here: City of Fresno Police Department, Internal Affairs Online Complaint Form <<https://www.fresno.gov/police/services-special-units/internal-affairs/internal-affairs-online-complaint-form/>> (as of Dec. 14, 2020).

²⁸⁹ More specifically, this also includes responding to police officer shootings of civilians and reviewing those investigations.

complaints and recommendations to the department. Moreover, the Fresno OIR regularly meets with members of the community and fields questions about the complaint process.

Orange County Sheriff’s Department: The Orange County Sheriff’s Department (Orange County Sheriff) accepts complaints: (1) in person, (2) by mail, or (3) by phone to the Internal Investigations Unit during regular business hours and to the Watch Commander if after regular business hours. On the agency’s public website, there is a webpage with links to the civilian complaint form available in 27 languages.²⁹⁰ The agency reports that these languages were determined by Orange County’s population. The complaint form was translated by bilingual employees and Google translate. Orange County Sheriff reports that third-party or anonymous complaints are accepted. The end of the civilian complaint form includes nearly verbatim language from Cal. Penal Code section 148.6. Information on the complaint process is attached to the complaint form itself and explained on the agency’s public website.

Wave 2 Agency	Form Accessible Online?	Can Submit Online?	Multiple Methods of Submission?	Available in Multiple Languages? ²⁹¹
Long Beach Police	✓	✓	✓	✓
Oakland Police	✓	✓	✓	✓ OS ²⁹² ✗ PV ²⁹³
San Jose Police	✓	✓	✓	✓
Sacramento County Sheriff	✗	✓	✓	✓
Sacramento Police	✓	✓	✓	✓
Fresno Police	✓	✓	✓	✓
Orange County Sheriff	✓	✗	✓	✓

²⁹⁰ The 27 languages include Albanian, Armenian, Cambodian, Chinese, Dutch, English, Farsi, French, Hebrew, Hindi, Hungarian, Llongo, Indo, Italian, Japanese, Korean, Lao, Polish, Punjabi, Russian, Spanish, Swedish, Tagalog, Tamil, Thai, Urdu, and Vietnamese. A link to the online complaint form and procedures can be located here: Orange County Sheriff’s Department, How to File a Complaint <<https://www.ocsheriff.gov/commands-divisions/professional-services-command/professional-standards/how-file-complaint>> (as of Dec. 14, 2020).

²⁹¹ Federal and state law require federally and state assisted law enforcement agencies to provide meaningful access to Limited English Proficient (LEP) individuals. Under federal law, to determine the extent of its obligation to provide services to the LEP population, the Federal Coordination and Compliance Section recommends that law enforcement agencies engage in a four-factor analysis. (See U.S. Dep’t of Justice, Federal Coordination and Compliance Section, Planning Tool: Considerations for Creation of a Language Assistance Policy and Implementation Plan for Addressing Limited English Proficiency in a Law Enforcement Agency <https://www.justice.gov/crt/fcs/Law_Enforcement_Planning_Tool> (as of Dec. 14, 2020). California state law also requires local agencies that receive state funding to provide language access services to LEP populations. (Gov. Code, § 11135, subd. (a); Gov. Code, § 7290). Law enforcement agencies may ask local community-based organizations to help translate complaint forms or create a database of qualified interpreters for speakers of any language, including sign language.

²⁹² “OS” refers to the online submission form.

²⁹³ “PV” refers to the printed or PDF version of the complaint form.

Wave 2 Agency	Third Party Complaints Allowed?	Includes Narrative Field for Description of Complaint?	Does Not Include Language from PC §148.6? ²⁹⁴	Complaint Process Information Attached to Form?
Long Beach Police	✓	✓	✓	✗
Oakland Police	✓	✓	✓	✓ OS ✗ PV
San Jose Police	✓	✓	✗	✓
Sacramento County Sheriff	✓	✓	✗ OS ✗ PV	✗
Sacramento Police	✓	✓	✓	✓
Fresno Police	✓	✓	✗	✗ OS ✓ PV
Orange County Sheriff	✓	✓	✗	✓

Early Intervention Systems

Law enforcement accountability is necessary to ensure legitimacy and improve relationships between law enforcement officers and the communities they serve. The killing of George Floyd in Minneapolis in May 2020 is a prime example of how a lack of accountability can have potentially harmful and even deadly effects; in the case of George Floyd, two of the four officers involved had previously been the subject of several complaints (one had six and another had sixteen filed against him).²⁹⁵ Although we will never know for sure, George Floyd’s death may have been preventable with the implementation of strong accountability measures

²⁹⁴ The Ninth Circuit and California Supreme Court have come to opposite conclusions regarding whether Penal Code section 148.6 is constitutional. (Compare *People v. Stanistreet* (2002) 29 Cal. 4th 497, 510 [Section 148.6 is a permissible regulation of prohibited speech, namely, false allegations against peace officers, which, on its face, does not violate the First Amendment to the United States Constitution] with *Chaker v. Crogan* (2005) 428 F.3d 1215, 1222, cert. denied, 547 U.S. 1128 (2006) [Penal Code section 148.6’s criminal sanction violated the First Amendment of the United States Constitution because it regulated content-based speech on the basis of that speech’s content].) As such, many California law enforcement agencies have removed the warning from their civilian complaint forms and accept anonymous complaints. The California Attorney General’s Office has also determined that a law enforcement agency can investigate allegations of police misconduct, even if the complainant did not sign the admonition as required by Penal Code section 148.6. (79 Ops. Cal.Atty.Gen. 1631 (1996).) The RIPA Board strongly supports the acceptance of anonymous complaints. The RIPA Board also renews its request to the California Legislature to address this conflict, since the requirements set out by the Penal Code can have a chilling effect on the submission of civilian complaints. For purposes of this review, a checkmark denotes that an agency does *not* include Penal Code section 148.6 language on their form.

²⁹⁵ Barker, et al., *Officers Charged in George Floyd’s Death Not Likely to Present United Front*, The New York Times (June 4, 2020) <<https://www.nytimes.com/2020/06/04/us/george-floyd-police-records-chauvin.html>> (as of Dec. 14, 2020).

that would have flagged these officers as needing training, reassignment, discipline, or termination.

Accountability in law enforcement can take many different forms. The Board’s Civilian Complaints subcommittee has been particularly interested in the use of Early Intervention Systems (EIS). This section provides a background on these systems and how they can be used to keep community members and officers safe while improving officer skills development. The Board is in the process of conducting research on how California law enforcement agencies use EIS and whether there is evidence that EIS are effective.

Early Intervention System Use in Law Enforcement Agencies

EIS have been around in some form or another since the 1970’s, but were often limited to very few categories of performance, such as use of force and civilian complaints.²⁹⁶ EIS are a necessary and valuable administrative tool that can enhance integrity and accountability of both individual officers and whole agencies.²⁹⁷ These systems are not meant to take over the job of supervisors or predict officer behavior. Instead, they are meant to be part of a larger performance management system. Ideally, EIS should provide an opportunity for agencies to: identify potentially at-risk behavior *before* the need for disciplinary action, promote civilian and officer safety, and provide officers with resources and tools to re-direct performance and behaviors.²⁹⁸ Moreover, while EIS may flag certain officer behavior that needs correction, any intervention should not replace discipline when it is needed.²⁹⁹

A strong EIS includes key components: identification of at-risk behaviors, evaluation of “flagged” officer behavior, intervention to address that behavior, and monitoring to ensure long-term change. Indicators – usually different types of police action – are used to track officer behavior.³⁰⁰ While there are many indicators used to identify at-risk officer behavior, they may vary by agency. Current literature does not define a minimum number of indicators for EIS to include. However, “the more potential indicators that can be identified and captured in the system, the more likely it is that an agency will be able to detect” which officers’ behaviors need to be redirected to improve their performance.”³⁰¹ Agencies will then set a specific threshold for each indicator, which is usually a set number of times an officer engages in a specific behavior. When that threshold is met, an officer’s behavior is then “flagged” for review. Some agencies may flag officer behavior only when it meets the threshold for one indicator, whereas others may institute a multilayered approach with successive “flags” to determine what kind of supervisor response and intervention is warranted.³⁰² When creating

²⁹⁶ Amendola and Davis, Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies (Nov. 2018) p. 2.

²⁹⁷ U.S. Dep’t of Justice, Office of Community Oriented Policing, Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives (Dec. 2005) p 6.

²⁹⁸ Amendola and Davis, Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies (Nov. 2018) p. 1.

²⁹⁹ U.S. Dep’t of Justice, Office of Community Oriented Policing, Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives (Dec. 2005) p. 5.

³⁰⁰ Amendola and Davis, Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies (Nov. 2018) p. 1.

³⁰¹ *Id.* at p. 3.

³⁰² *Id.* at p. 5.

thresholds for specific indicators that will be flagged, it is also important for the system to identify when an officer has nearly met the threshold across various indicators to ensure interventions are undertaken and at-risk behavior by officers is not missed simply because they do not meet the threshold in a single category.³⁰³ Moreover, agencies should also have a system that lets them run assessments of officers and not simply rely on flagging. These assessments would be useful for individual performance evaluations.³⁰⁴

EIS Requires Supervision of Both Line Officers and First-Line Supervisors

Effective first-line supervisors are required to make EIS function well.³⁰⁵ An EIS should not only apprise supervisory staff of subordinate officer and group behavior, but also supervisor behavior.³⁰⁶ Command staff should have a separate system authorization and login to monitor supervisors' oversight of their subordinates as well. A system that allows for this kind of management will assist an agency in holding itself accountable.³⁰⁷

First-line supervisors require support through training and mentoring by command staff on how to correct behavior. Training and policies should encourage supervisors to regularly review system data, such as before roll call, be proactive in addressing potential problems, documenting those meetings, and reporting back to the supervisor's own chain of command.³⁰⁸

When an officer's behavior is identified as needing intervention, supervisors must be required to include a note with information about when they reviewed the information, what resources they recommended, and what actions were taken. Including this information will assist with monitoring and management of that monitoring.³⁰⁹

Common Indicators Used in EIS

The type and number of indicators varies across agencies. Current literature does not set out a best practice for the number of indicators, though there is some consensus around which types of police behavior to oversee. The U.S. DOJ includes these types of indicators in its consent decrees with agencies across the nation.³¹⁰ Some agencies will include other indicators that they deem helpful. Research shows the most common EIS indicators include:

³⁰³ *Id.* at p. 6.

³⁰⁴ *Id.* at p. 6.

³⁰⁵ U.S. Dep't of Justice, Office of Community Oriented Policing, Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives (Dec. 2005) pp. 5-6.

³⁰⁶ Amendola and Davis, Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies (Nov. 2018) p. 5.

³⁰⁷ Amendola and Davis, Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies (Nov. 2018) p. 7.

³⁰⁸ U.S. Dep't of Justice, Office of Community Oriented Policing, Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives (Dec. 2005) p. 11.

³⁰⁹ Amendola and Davis, Best Practices in Early Intervention Implementation and Use in Law Enforcement Agencies (Nov. 2018) p. 7.

³¹⁰ See *U.S. v. City of Seattle* (W.D. Wash. 2012) 12-cv-1282; *U.S. v. the County of Los Angeles and the County of Los Angeles Sheriff's Dep't* (C.D. Cal 2015) 15-cv-3174; *U.S. v. City of New Orleans* (E.D. La. 2013) 17-cv-1924; *U.S. v. Police Department of the City of Baltimore, et al.* (Md. 2017) 17-cv-0099.

- All misconduct and community complaints against the officer, including disposition of each allegation
- Racial and identity profiling allegations
- All reportable uses of force, broken down by level and type
- Number of shootings or weapons discharges
- All injuries and deaths to persons in the officer's custody or an officer's presence at the scene of any deaths
- Vehicle pursuits and traffic collisions involving agency equipment
- All instances in which force is used and a person is charged with Failure to Obey, Resisting Arrest, Assault on an Officer, Disorderly Conduct, Trespassing, or similar charges
- All instances in which an officer issues three or more citations during a single encounter
- Violations of the agency's body-worn and in-car camera policies
- All instances in which an agency learns:
 - That a declination to prosecute any crime or municipal code violation was based upon concerns of the Prosecutor about an officer's credibility;
 - That a court has made a negative credibility determination regarding an officer; or
 - That a motion to suppress evidence was granted on the grounds of a constitutional violation by an officer
- All criminal proceedings initiated against an officer, as well as all civil or administrative claims filed with or against the agency or its agents that result from the actions of sworn personnel
- All disciplinary action taken against officers
- All non-disciplinary corrective action required of officers
- All awards and commendations received by officers, including those received from civilians
- Officer sick leave usage
- Training record for each officer
- Loss or theft of agency property in custody of the employee, including money, firearms, force instruments, ID cards
- Interviews or interrogations in violation of agency policy and law

- Arrests, especially excessive discretionary arrests
- Off-duty employment
- Traffic Stops
- Warrantless searches and seizures

Possible Interventions to Provide “Flagged” Officers

Interventions should vary to meet the wide range of officers’ needs.³¹¹ The more targeted or specialized an intervention, the better it will be at helping the officer achieve needed improvements.

The most common intervention includes counseling by the officer’s immediate supervisor. These counseling sessions can be both informal and formal. They may arise from something a supervisor witnesses in the field and wants to correct immediately or when an EIS flags potentially risky behavior. Another common form of intervention is training, which is directed by a supervisor depending on the flagged behavior. In some instances, officers may self-identify training needs. Another type of intervention may be to send a crisis intervention team that is trained to immediately respond to an incident whereby officers can get immediate peer counseling in the event of an officer involved shooting or use of force involving serious bodily injury.

Some agencies have employed a creative type of intervention through reassignment and relief from duty. Each assignment in an agency comes with different risk factors, which some individuals are more suited for than others. If an officer has been given the opportunity to remedy behavior and alternatives for re-assignment do not succeed or are not available, it may be in the best interest of all (the officer, the agency, and the public) to transfer the officer to an assignment where the particular problematic situations are less likely to happen.³¹² Similarly, some agencies have employed a “temporary relief from duty” option where sergeants have the authority to relieve an officer from duty without loss of pay if that officer is clearly under a great deal of stress or unfit for duty that day. Where this has been used, there has been no formal action taken or documented. However, these types of interventions should be tracked to ensure there is no abuse of this practice.³¹³

Some interventions are less about the officers’ skills development and instead are more personal. These interventions can include wellness programs or professional counseling on personal or family issues. This kind of intervention may require buy-in from officers because of stigmas that can be attached to obtaining counseling.³¹⁴ The U.S. Department of Justice found that officers were more open to support from their peers through formal peer officer support

³¹¹ U.S. Dep’t of Justice, Office of Community Oriented Policing, Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives (Dec. 2005) p. 6.

³¹² *Id.* at p. 26.

³¹³ *Id.* at p. 26.

³¹⁴ *Id.* at p. 23.

programs. These programs are often comprised of a few officers in a precinct or unit who receive training to be designated as peer support.³¹⁵

Once an intervention is provided to an officer, it is imperative that the supervisor follow through to see if the officer changes their behavior.³¹⁶ The practice of follow through has been found to vary among agencies; some do it for the long term, while others do not follow up at all. Some agencies make interventions voluntary and could be one reason that there may be no follow-through.³¹⁷ Follow-through could include observing an officer out in the field several times a month or periodic check-ins and inquiring if officer needs more support. It is critical that clear follow-through actions are designated for a supervisor to reinforce the need to improve or modify behavior.

U.S. DOJ EIS Recommendations

In various pattern and practice investigations and consent decrees, U.S. DOJ has required agencies to adopt an EIS or improve a system an agency may already have in place. In this process, DOJ has recommended similar best practices, including:

- EIS policy should include a mechanism for review of an officer whose activity has already triggered an indicator threshold so that the threshold is lower if EIS is triggered again.³¹⁸
- Collect trends for supervisors, precinct, squad, and unit.
- Collect trends for precinct-level activity on use of force, complaints and dispositions, number of officers triggering EIS review, and supervisor EIS reviews with officers.
- EIS policy should include directives setting forth the specific information that the EIS will capture, as well as data storage, data retrieval, reporting, data analysis, pattern identification, supervisory use, supervisory/departmental intervention, documentation, audits, access to the system, and confidentiality of personally identifiable information.
- All data must be entered in a timely, accurate and complete manner.
- Comparisons should be done by peer group between officers of similar assignment and duties.
- Command staff collect and, at least quarterly, analyze EIS information related to supervisor, squad, and officer trends.
- First line supervisors and lieutenants review EIS data for all officers under their direct command at least monthly, and whenever an officer first comes under their supervision.
- At least quarterly, supervisors will review broader, pattern-based reports.

³¹⁵ *Id.* at pp. 24-25.

³¹⁶ *Id.* at pp. 27-28.

³¹⁷ *Id.* at pp. 27-28.

³¹⁸ See *U.S. v. City of Seattle* (W.D. Wash. 2012) 12-cv-1282; *U.S. v. the County of Los Angeles and the County of Los Angeles Sheriff's Dep't* (C.D. Cal 2015) 15-cv-3174; *U.S. v. City of New Orleans* (E.D. La. 2013) 17-cv-1924; *U.S. v. Police Department of the City of Baltimore, et al.* (Md. 2017) 17-cv-0099.

- EIS protocol should include data storage, data retrieval, reporting, data analysis, pattern identification, supervisory use, supervisory/departmental intervention, documentation, audits, access to the system, and confidentiality of information protected by law.
- Offer a variety of intervention options like counseling, training, or other supervised, monitored, and documented actions plans and strategies to correct behavior.
- Aggregate statistical information should be kept indefinitely and used to evaluate longitudinal trends.

Promising Practices

It is no surprise that any accountability measure, including EIS, must be supported by management and achieve buy-in from the line staff, command staff, and unions. Agency EIS have the most success when the chief or sheriff has advocated for and supported the system within the agency.³¹⁹ To ensure officers do not feel that this system is a “gotcha” system but rather something they should be invested in, it is imperative that an agency adequately educate its members. Officer training should include what the EIS captures and how that data will be interpreted, as well as the purpose of the data.³²⁰ Supervisors should be trained to understand their role in the accountability process and how this may alter their current responsibilities.³²¹

Agencies must also clearly outline how EIS works, how and why it will be used, and what interventions will look like in their policies and protocols.³²² Agencies can provide EIS training at the academy, during roll call, through literature, or during in-service trainings or informal meetings.³²³ It is important for agencies to stress how the use of EIS and improvement of agencies’ accountability systems as a whole will improve officer and community safety by improving officers’ skills.

Examples of EIS in Practice: Phoenix and Seattle Police Department

The Board describes these two agency’s systems only to give readers a clearer understanding of how EIS works, but does not endorse these systems, as more research regarding the effectiveness of these systems is needed.

Phoenix PD³²⁴

Phoenix’s system includes five phases: 1) identification, 2) notification, 3) supervisor review, 4) intervention, and 5) follow-up. The “identification” phase covers both officer and supervisor “potential risk behavior.” When the system issues an employee or supervisor alert, each alert is reviewed on a case-by-case basis by a coordinator who considers certain factors. Next, in the “notification” phase, the system informs the employee’s chain of command. The alert includes information helpful to command staff to understand what happened. When the alert is sent by

³¹⁹ U.S. Dep’t of Justice, Office of Community Oriented Policing, Supervisions and Intervention within Early Intervention Systems: A Guide for Law Enforcement Executives (Dec. 2005) p. 5.

³²⁰ *Id.* at p. 37.

³²¹ *Ibid.*

³²² *Id.* at p. 42.

³²³ *Id.* at p. 43.

³²⁴ See generally Phoenix Police Dept. Personnel Support Services, Operations Order 3.8 (Aug. 2017) pp. 5-7.

the coordinator, it is copied to command up to bureau/precinct commander/administrator. During the “supervisor review” phase, a first-line supervisor reviews all pertinent information provided, meets with employee, and determines if intervention would be beneficial. This phase must be completed with 14 calendar days and the first- and second-line supervisors work together. The employee is encouraged to be an active participant and provide feedback in a private meeting aimed at addressing the root cause of the potential risk behavior. If intervention is required, during the “intervention phase,” the supervisor meets with the officer again to go over recommended intervention(s) and create timelines for specific performance. Interventions can take three different forms:

- Supervisory-based intervention: handled solely in chain of command by providing guidance or specific strategies that employee can implement immediately.
- Training-based intervention: requires employee to take training as soon as possible to improve performance.
- Wellness-based intervention: includes support services like Employee Assistance Program (professional counseling services provided through the governmental employer), peer support program, critical incident stress management, police chaplaincy program.

The final “follow-up” phase must be complete within 45 days after a supervisor receives an alert. Documentation must be submitted and should include the time and date of the meeting with the officer and a statement that the alert was reviewed. This documentation is forwarded to a second-line supervisor for approval and then the second-line supervisor sends the completed and approved documentation to the coordinator. Phoenix PD’s EIS includes different indicators or behaviors and sets different thresholds for employees and supervisors that will flag their behavior for review.

Seattle PD³²⁵

The Seattle Police Department’s EIS policy begins by explaining what EIS is and why the agency uses it. Seattle PD’s EIS has specific time frames when each phase of the system is to be followed. The Early Intervention Assessment begins with an Early Intervention Coordinator notifying a Sergeant/First-Line Supervisor that an assessment needs to be completed within three days of identifying the employee. Within 14 days of receiving the notice, the Sergeant/First-Line Supervisor must complete the assessment form and submit it to the chain of command. Within three days of receiving that assessment, a Lieutenant/Manager must complete an EIS approval form and submit it to the Captain/Director. Within seven days of receiving the assessment, the Captain/Director must review it, complete an EIS approval form, and submit it to the EIS Coordinator. Next, at least one week before the next committee meeting, the EIS coordinator must submit the assessment to a “Performance Review

³²⁵ See generally Seattle Police Department Manual, 3.070 Early Intervention System (Apr. 1 2020) <<https://www.seattle.gov/police-manual/title-3---employee-welfare/3070---early-intervention-system>> (as of Dec. 14, 2020).

Committee.” Within seven days of the meeting, the “Performance Review Committee” must review the assessment and either reject it by sending it back to the chain of command or accepting it and sending it the Bureau Chief. Within 5 days of receiving the assessment, the Bureau Chief will review and approve the assessment.

The agency has all officers separated and assigned into five peer groups, which determines the threshold level upon which an alert will be triggered. If an employee meets the threshold of a risk factor, then an Early Intervention Assessment is conducted and may result in a mentoring plan, for which a supervisor is directly liable for tracking progress of the officer. Additionally, the EIS policy provides that an assessment will be conducted at the aggregate level if an officer has a total of 10 indicators during a six-month period. The agency’s policy clearly delineates examples of the types of interventions an officer may participate in and the roles and tasks of the coordinator, first-line supervisor, lieutenant and managers, captains and directors, and the bureau chief.

Vision for Future Reports

In the coming years, the Board will do a deeper dive into the use of civilian complaints within EIS and the effectiveness of EIS in holding individual officers, supervisors, units, and agencies accountable. Additionally, the Board remains committed to creating a uniform “complaint” definition to help create consistency throughout the State of California regarding what kinds of reports should constitute a complaint.