

CALIFORNIA DEPARTMENT OF JUSTICE

REVIEW OF
SACRAMENTO POLICE DEPARTMENT

REPORT &
RECOMMENDATIONS

PHASE II

2020



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EXECUTIVE SUMMARY

INTRODUCTION

In March 2018, following the fatal shooting of Stephon Alonzo Clark by members of the Sacramento Police Department (SPD), SPD Chief Daniel Hahn requested that the California Department of Justice (DOJ) conduct a review of SPD's policies, procedures, and training related to use of force. The purpose of this review has been to identify areas in which SPD could improve and provide evidence-based recommendations to facilitate SPD's commitment to protecting the community of Sacramento via safe, constitutional, and effective law enforcement operations. As in Phase I, nationally recognized law enforcement experts from public safety consulting firm 21 CP Solutions (21 CP) assisted DOJ in evaluating SPD's policies, systems, and practices, and assisted in fashioning recommendations for improvement.

In January 2019, DOJ released the Phase I Report, detailing its findings and recommendations in six key 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; and (6) community engagement and transparency.¹ With respect to use of force issues, the Phase I Report focused on SPD's use of lethal force.

Although DOJ's Phase I Report identified areas in which SPD was excelling or independently progressing, including in information transparency and body worn camera policy, it also identified multiple operational deficiencies, including outdated use of force policies, a lack of standardization and rigor in use of force investigations and training, and a lack of systemic information collection and accountability measures. Based on these findings, in 2019, DOJ issued 66 specific policy and training recommendations for improvement, including:

- More expressly connecting the sanctity of human life with use of force-related policies;
- More clearly defining and describing to officers when force is and is not authorized;
- Prohibiting certain problematic and needlessly high-risk uses of force, such as:
 - Chokeholds, carotid restraints, and other maneuvers designed to, or which may foreseeably result in, cutting off blood or oxygen to a subject's head;
 - Control techniques and transport that involve a substantial risk of positional asphyxia; and
 - Shooting at or from moving vehicles.
- Mandating the use of de-escalation tactics whenever feasible and clearly defining and describing de-escalation techniques and strategies, such as the use of tactical repositioning, strategic communication skills, and using cover and concealment;
- Amending the foot pursuit policy to provide more guidance on foot pursuits, including requiring that officers have a reasonable suspicion that a crime has taken place before initiating a pursuit;

¹ Cal. Dept. of Justice, Sacramento Police Department, Report and Recommendations (2019) (hereafter Phase I Report). Available at <https://oag.ca.gov/system/files/attachments/press-docs/spd-report.pdf>.

- Requiring that officers render and/or request medical aid when necessary after using force;
- Ensuring that officers intervene to stop other officers from using force that violates law or policy and report any such misconduct to a supervisor or internal affairs;
- Requiring officers to exhaust all other means reasonably available to them under the circumstances, before using deadly force;
- Establishing a use of force review board to review and assess all serious uses of force, identify areas for improvement and make recommendations for implementing improvements;
- Requiring annual use of force training for all staff regardless of rank; and
- Providing greater transparency by consistently releasing information regarding use of force and other related topics.

Since the DOJ published the Phase I Report, SPD has adopted many of the Phase I policy recommendations. In Phase II, DOJ conducted in-depth reviews of SPD's less-lethal² force incidents, and assessed SPD's accountability systems, including SPD's use of force reporting and personnel complaint investigations. Specifically, DOJ evaluated SPD's policies and practices related to hiring, recruitment and retention, officer discipline, early intervention, data management, and bias prevention. DOJ also reviewed SPD's revised policy on use of force, issued in September 2019, and its internal investigations manual issued in August 2019.

The incident level evaluations included:

- An incident-level review of use of force incidents occurring between 2016 and 2018, using a sample size of 120 cases;
- A statistical review of less-lethal use of force incidents occurring between 2013 and 2018;³ and
- A review of all formal internal affairs investigations of personnel complaints occurring between 2016 and 2018.

Finally, it is important to note that DOJ's Phase II review concluded prior to the widespread demonstrations against police violence that were triggered by the deaths of George Floyd, Breonna Taylor, Rayshard Brooks and others, in May and June of 2020. The DOJ urges SPD, and all California law enforcement agencies that were involved in protest-related activities, to: (1) conduct a prompt and detailed inquiry and after-action assessment of their personnel's conduct in response to these demonstrations over the death of George Floyd and other incidents

² California law recognizes only two general categories of police force, "deadly force" and "non-deadly force" and defines "deadly force" as "force that creates a substantial risk of causing death or serious bodily injury, including but not limited to, the discharge of a firearm." (Pen. Code. § 835a(e)(1)). However, in this report DOJ uses the term "less-lethal force," which is a subset of non-deadly force that is commonly used by law enforcement agencies, to describe force implements such as restraint holds, projectiles, Tasers, and chemical irritants.

³ DOJ's incident level and statistical review of SPD's less-lethal force incidents and data analyzed use of force incidents that occurred *before* DOJ published its Phase I Report and recommendations regarding SPD's use of force policies and training in January 2019.

involving police violence against African-Americans; and (2) report the results of these assessments to their communities.

This report discusses the findings and recommendations arising from this second and final phase of DOJ's review of SPD's police practices.

SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS

I. LESS-LETHAL FORCE

A. CAROTID RESTRAINTS AND MANEUVERS THAT CAN CAUSE POSITIONAL ASPHYXIA

KEY FINDINGS:

1. Physical maneuvers and positioning, including carotid restraints, that are designed to or may foreseeably cut off blood or oxygen to an individual's head, should be prohibited because of the unreasonable risk of serious injury or death associated with their use.
2. In its SPD incident level review, DOJ found 11 cases of problematic force incidents involving the application or attempted application of a carotid restraint hold. This comprises half of all problematic force incidents.
3. DOJ reviewers observed more than 12 instances in which an officer appeared to have other force options or de-escalation tactics available, but chose instead to use the risky carotid restraint hold.
4. SPD use of force data showed that use of the carotid restraint hold, which SPD has used with higher frequency than other police departments, was associated with a high rate of injury to subject and officers alike.
5. In June 2020, SPD took an important step to eliminate the sanctioned use of carotid restraint holds by deleting all references to it from SPD's use of force policy and notifying officers that SPD no longer authorizes the use of the carotid restraint hold as a force option. However, to ensure accountability and transparency, SPD should expressly de-authorize use of the carotid restraint hold in its use of force policy.

RECOMMENDATION: SPD should explicitly state in written policy that the use of the carotid restraint hold and other maneuvers and positioning that may cause positional asphyxia is not authorized. SPD can enhance individual and officer safety by prohibiting carotid restraint holds while also ensuring that officers have the tools needed to subdue combative subjects, including by stressing the tactical advantages of other, safer force options, and of creating and maintaining a safe distance between themselves and subjects.

B. FOOT PURSUITS

KEY FINDINGS:

1. Foot pursuits of suspects—a situation in which an officer, on foot, chases a suspect in an effort to detain that individual—can place the officer, public, and the suspect at significant risk of injury.
2. Foot pursuits should be avoided whenever possible because: (1) they are associated with a higher likelihood of using force; (2) a substantial number of officer-involved shootings involve foot pursuits; (3) certain use of force tactics may substantially increase the likelihood of injury among fleeing suspects; and (4) foot pursuits are associated with productivity losses due to accidental and assault-related injuries to officers.
3. Of the SPD use of force cases reviewed in Phase II, half of all problematic use of force incidents arose from foot pursuits. Some of those incidents involved foot pursuits initiated based on an officer’s suspicion that a low-level criminal offense, such as panhandling or littering, had occurred.

RECOMMENDATION: SPD should set forth clear guidelines for initiating and ending foot pursuits. The policy, and related tactical training, should address safety concerns like avoiding potential traps, leaving a police vehicle accessible, and handling situations where a suspect traverses over a wall or fence, flees from a vehicle, rounds a corner, or otherwise enters a confined space or difficult terrain.

C. TASER USE

KEY FINDINGS:

1. Of the SPD use of force cases reviewed in Phase II, 41 percent of all problematic use of force incidents involved use of the Taser.
2. Firing a Taser at a fleeing suspect is discouraged, unless the particular circumstances of the incident justify it, because incapacitating a moving person places the subject at a greater risk of injury due to their inability to brace themselves.
3. Policing best practices discourage using the Taser for more than three five-second intervals because it may increase the risk of serious injury or death.
4. Using the Taser in “drive stun” mode to subdue a subject via pain is likewise discouraged because it has limited effectiveness and is likely to inflame a subject’s resistance rather than achieve the goal of compliance.

RECOMMENDATION: To avoid unnecessary risk of injury, SPD should prohibit officers from using a Taser on a fleeing suspect; limit Taser use to three, standard five-second cycles; and prohibit using the Taser in “drive stun” mode as a pain compliance technique.

D. CRISIS INTERVENTION TRAINING

KEY FINDINGS:

1. In 60 percent of use of force cases reviewed, officers reported that the subject was in some type of altered mental state. Moreover, SPD’s use of force data collected between 2013 and 2018 indicated that roughly one-third of use of force incidents involved citizens under the influence of drugs or alcohol.
2. Crisis Intervention Training (CIT) teaches officers how to safely de-escalate behavioral crisis situations and, in some cases, coordinate community health and mental health care providers to connect subjects to treatment, thus avoiding injuries and jail.

RECOMMENDATION: SPD should reinforce its commitment to CIT for officers and expand its partnership with mental health and social welfare professionals in order to increase its capacity to respond appropriately to individuals in crisis and limit force where possible.

E. CANINES

KEY FINDINGS:

1. SPD currently operates its canine units using canines trained according to a “find and bite” method, which means that nearly every successful apprehension of a suspect involving SPD canines will end in the dog biting the subject.
2. Between 2013 and 2018, SPD’s canine deployments ranked second only to projectiles in causing visible injuries and required medical clearance nearly as often as Taser use.
3. Although DOJ rarely observed SPD officers using canines inappropriately (the majority of observed canine deployments were conducted in efforts to locate suspects without exposing officers to unwarranted risk), adopting a “find and bark” or “circle and bark” strategy would reduce the likelihood that a suspect is bitten when apprehended and give SPD officers more options to use minimal force—or avoid using force altogether—to apprehend and place a subject in custody once located.

RECOMMENDATION: SPD should transition its canine deployment strategy from “find and bite” to “find and bark.”

F. DE-ESCALATION

KEY FINDINGS:

1. DOJ identified issues with the tactical choices that SPD officers made in more than half of all use of force incidents in its incident level review. Of these incidents, the most commonly cited tactical issue related to the failure to use, or fully utilize, de-escalation techniques.
2. In 13 percent of use of force cases reviewed, reviewers identified situations in which SPD officers could have used time, distance, and cover to put themselves in a better position to confront the circumstances in an incident.
3. In multiple incidents, SPD officers used force on subjects who failed to comply with orders but did not otherwise pose any discernable danger to responding officers or others.

RECOMMENDATION: In order to reduce the frequency of unnecessary uses of force, and ensure that its officers comply with California’s legal mandates regarding de-escalation, SPD should make de-escalation an affirmative duty, and emphasize de-escalation techniques in all use of force training.

G. MULTIPLE SIMULTANEOUS APPLICATIONS OF FORCE (OVERWHELMING LESS-LETHAL FORCE)

KEY FINDINGS:

1. Prescribing or condoning the simultaneous application of multiple force options as a tactic to subdue a subject should be avoided because it may override the guiding principle that officers should use force that is proportional to the threat encountered.
2. In multiple use of force cases, DOJ identified a tactic referred to as “overwhelming use of force” in which SPD officers used multiple less-lethal force options simultaneously.

RECOMMENDATION: To improve clarity, SPD should consider adopting a policy that clarifies what overwhelming use of force is, and limit the use of multiple, simultaneous applications of force.

H. USE OF FORCE REPORTING

KEY FINDINGS:

1. Detailed reports describing the specific facts and circumstances surrounding an officer's decision to employ force are critical to a supervisor's and/or the department's review and assessment of a use of force incident, and are necessary for ensuring accountability, and devising improvements to policy, training, tactics, and equipment.
2. Nineteen percent of SPD use of force cases that DOJ reviewed contained use of force reporting that omitted material information, including: (1) the officer's reasons for stopping a subject; (2) officer observations regarding a subject's mental state; (3) verbal exchanges between an officer and subject that preceded a use of force; and (4) the subject's physical movements preceding the use of force.
3. Twelve percent of use of force cases contained reporting in which officers used conclusory language to describe the circumstances justifying their use of force, including using vague terms such as "resisting" and "fighting" instead of using detailed, specific facts specifically describing the level of aggression encountered.

RECOMMENDATION: SPD should mandate that officers complete and submit detailed statements detailing the facts and circumstances of each use of force to ensure that SPD supervisors and management staff have all of the critical data necessary to competently analyze the incident, identify where improvement is needed, and ensure accountability.

I. USE OF FORCE REVIEW

KEY FINDINGS:

1. To ensure that all use of force incidents are thoroughly and consistently reviewed, police departments develop standalone protocols that specifically set forth the essential components of the use of force review process, including policies that: (1) impose a rigorous and transparent oversight system to ensure accountability and community trust; and (2) specify the responsibilities of all involved personnel including the officers involved, witness officers, the investigating supervisors, and review requirements.
2. In one out of 10 cases, SPD supervisors did not conduct a sufficiently comprehensive review of their officers' use of force reporting.
3. In some cases, the supervisory review did not critically analyze whether an initial stop, detention, or search was justified. In other instances, supervisors did not address material problems with use of force incidents such as: (1) using a Taser on a fleeing subject; (2) deploying a "find and bite" trained canine to apprehend a subject despite already visually locating the subject; and/or (3) incorrectly classifying a Taser deployment as "self-defense," despite the Taser being used against a fleeing subject.

RECOMMENDATION: SPD should implement a policy that expresses clear and specific guidelines for how it categorizes and reviews use of force incidents.

J. SPD'S USE OF FORCE POLICY

KEY FINDINGS:

1. California's use of force standard, articulated in Assembly Bill 392 and codified at Penal Code section 835a, requires that deadly force be restricted to situations in which an officer reasonably believes, based on the totality of the circumstances, that such force is *necessary* to defend against an *imminent* threat of death or bodily injury to the officer or another person.
2. SPD improved its use of force policy by: (1) requiring officers to consider proportionality when deciding whether to use force; (2) substantially incorporating California's use of force standard; and (3) instructing officers to use crisis intervention techniques and consider whether subjects are physically incapable of responding to officer commands when confronted with a subject who appears to be experiencing a behavioral health crisis.
3. However, SPD's revised use of force policy omits: (1) the concept of necessity from parts of its policy that instruct when deadly force is authorized; (2) the part of California's use of force standard that emphasizes the distinction between the concepts of "retreat," which an officer does not have to do upon encountering resistance to an arrest, and "tactical repositioning" or other de-escalation tactics, which should be employed when feasible; and (3) the distinction between an "*imminent threat*" of death or serious bodily injury, which may justify deadly force, from a mere fear of future harm, which does not justify deadly force under California's use of force standard.

RECOMMENDATION: SPD should revise its use of force policy to require that principles of necessity, proportionality, and de-escalation shape how officers decide when to use force and to make use of force more consistent with California's use of force standard.

K. RACE DISPARITIES IN USES OF FORCE, STOPS, AND ARRESTS

KEY FINDINGS:

SPD's aggregate data depicting uses of force between 2013 and 2018, shows that:

1. African Americans were involved in a disproportionate percentage of SPD use of force incidents when compared to the distribution of races and ethnicities within Sacramento's population. African Americans were involved in 43 percent of use of force incidents, whereas whites were involved in 31 percent. African Americans comprise 13 percent of Sacramento's population, whereas whites comprise 34 percent.

2. These use of force disparities appear to recede, however, if the percentage of African Americans involved in SPD's uses of force are compared to the percentage of African Americans arrested in the overall number of SPD arrests. African Americans were arrested at greater frequency than whites, with African Americans involved in 40 percent of SPD arrests, and whites in 31 percent.
3. African American motorists were stopped and searched more frequently than whites. African Americans and Hispanics were also more likely to be stopped for driving infractions for which officers have greater enforcement discretion, such as vehicle registration or equipment violations. By contrast, African American motorists were less likely than white motorists to be stopped for lower discretion violations of the Vehicle Code such as moving and hazardous driving violations.
4. Despite being stopped and searched at a greater frequency than whites, searches of African American motorists were less likely to successfully yield a discovery of contraband than whites.

RECOMMENDATION: Although SPD's aggregate use of force data and stop data indicate there are racial disparities in SPD's vehicular stops, arrests, and uses of force, the data does not provide any conclusive answer regarding the cause of these disparities. Therefore, SPD should conduct a comprehensive study examining the racial disparities involving its stops, arrests, and uses of force to identify the cause or causes of these disparities, and explore strategies for reducing disparities while ensuring officer, subject, and public safety.

II. BIAS PREVENTION

A. IMPLICIT BIAS AND CULTURAL AWARENESS TRAINING

KEY FINDINGS:

1. SPD lacks a codified process for creating, reviewing and approving lesson plans for the California Commission on Peace Officer Standards and Training (POST) and non-POST training it provides, which would ensure that the classroom training reflects the core values and concepts that need to be conveyed in implicit bias and cultural awareness training.
2. During its review of SPD training materials and live classes, DOJ reviewers observed some classroom activities and exercises that did not effectively advance the essential underpinnings of bias and cultural awareness teachings, and in some cases, undermined them by, for example, showing videos that perpetuate harmful racial stereotypes without identifying the stereotypes and discussing why they are harmful.

RECOMMENDATION: SPD should regularly review and update its implicit bias training lesson plans and training materials to ensure that they reflect the POST model curricula and SPD core principles.

B. TRAINING TO REDUCE THREAT PERCEPTION FAILURES

KEY FINDINGS:

1. Studies have found that adopting policies that emphasize the use of de-escalation techniques or gathering of individuating information before employing force, may reduce the influence that implicit bias has on force decisions.
2. SPD incorporates immersive training simulations via a Force Option Simulator when training recruits and officers regarding officer awareness, weapons training, force tactics, and de-escalation techniques, but the simulator is not currently equipped with programs, such as “shoot/don’t shoot” drills, that are developed to test or demonstrate how unconscious bias can affect use of force decision-making.

RECOMMENDATION: SPD should continue to develop and provide robust training exercises that focus on de-escalation, tactical repositioning, and other techniques and strategies that may reduce threat perception failures.

III. PERSONNEL COMPLAINTS AND INVESTIGATIONS

A. INTERNAL AFFAIRS AS A CENTRALIZED COORDINATOR OF PERSONNEL COMPLAINTS AND INVESTIGATIONS

KEY FINDINGS:

1. Having one division, such as an internal affairs division serve as the central body in charge of receiving, investigating, and coordinating the administrative review of personnel misconduct complaints helps to ensure quality and consistency.
2. SPD’s personnel complaint investigation policy and manual do not expressly vest its Internal Affairs Division with the responsibility of ensuring that all complaints are tracked, assigned, and monitored for quality and consistency.

RECOMMENDATION: In order to ensure that all personnel complaint investigations are thorough, fair, and resolved timely, SPD should designate its Internal Affairs Division as the central coordinator and quality control hub for all personnel complaint intake, investigation, and review processes.

B. COMPREHENSIVE INVESTIGATIVE SUMMARIES

KEY FINDINGS:

1. A misconduct investigation should include a report that provides the decision-maker with sufficient information to arrive at a well-based finding, and typically includes a detailed, comprehensive summary that, while impartial, should also identify inconsistencies between statements and inconsistencies between statements and physical evidence.
2. SPD's personnel investigation files often contained substantial evidence supporting the recommended decision, however, unless an investigation resulted in a discipline recommendation, less than half of SPD's investigative case files contained a detailed narrative summarizing the nature of the allegations and the evidence gathered.
3. Of the SPD personnel investigation case files that contained summaries, only 38 percent provided an adequately detailed accounts of the facts of the case.

RECOMMENDATION: Every SPD misconduct investigation should include a comprehensive investigative summary to ensure that the evidentiary bases for the investigation's findings are clearly supported and accessible to command staff who make disciplinary recommendations.

C. CLASSIFICATION AND CATEGORIZATION OF PERSONNEL MISCONDUCT

KEY FINDINGS:

1. A personnel complaint investigation and discipline system that uses specific categories to describe and classify personnel misconduct is necessary to ensure consistent, transparent, and fair disciplinary outcomes.
2. SPD policy lists 17 categories of officer misconduct. In practice, however, SPD routinely relies on a limited set of vaguely worded categories of misconduct such as "conduct unbecoming" and "neglect of duty" to encompass a broad range of officer misconduct.
3. Of the personnel complaint investigation files DOJ reviewed, more than half (58%) of the personnel investigation files adjudicated "conduct unbecoming" charges and 44 percent of the personnel investigation files adjudicated "neglect of duty" charges.

RECOMMENDATION: To ensure the integrity of its personnel complaint investigation system, SPD should evaluate its personnel misconduct categories to ensure they provide misconduct classifications that are specific and accurate.

D. STANDARDIZED, WRITTEN POLICIES DETAILING SPD’S PERSONNEL COMPLAINT INVESTIGATION PROCEDURES

KEY FINDINGS:

1. A personnel misconduct complaint should be formally and fully investigated where the allegations, if true, would likely result in formal discipline unless the complaint is frivolous or false on its face. Personnel complaint investigation policies should clearly articulate: (1) how personnel complaints are assigned for investigation; (2) the investigatory standards to which personnel complaint investigations must adhere; (3) a system for tracking and reviewing complaints and investigations for quality control.
2. In 2019, SPD improved its personnel complaint investigation system by issuing a revised Internal Affairs Manual that eliminates classifying certain complaints as “supervisory inquiries”—a practice that DOJ recommended discarding in Phase I because this classification designated certain complaints for informal review and resolution without the tracking and review required for formal personnel investigations.
3. SPD’s revised personnel complaint investigation system retains a two-tiered investigation system, in which complaints that may result in disciplinary action are investigated by Internal Affairs and complaints that may not result in disciplinary action may be assigned to the officer’s division for investigation. Yet, without a disciplinary matrix or any other predictable guideline for determining whether a particular complaint may result in formal discipline, SPD’s personnel complaint system provides no clear guidance for determining whether a particular complaint should be assigned to the division or Internal Affairs for investigation.

RECOMMENDATION: SPD should standardize its personnel complaint investigation procedures via written policy and train all staff to adhere to these policies when investigating personnel misconduct allegations.

IV. DISCIPLINE

A. DISCIPLINARY RECOMMENDATION PROCESS

KEY FINDINGS:

1. To ensure that a department’s disciplinary system sets clear expectations and consistently, fairly, and transparently imposes accountability upon its officers, police departments should develop and codify a standardized system for applying disciplinary action.
2. In contrast, SPD’s system for applying discipline when a misconduct complaint is sustained lacks such standardization or codification, and therefore provides limited predictability or transparency to officers or members of the public.

RECOMMENDATION: To ensure fairness, transparency, and predictability, SPD should codify its disciplinary recommendation process to ensure that recommended discipline is uniformly applied and commensurate with the seriousness of the offense.

V. *EARLY INTERVENTION PROGRAM (EIP)*

A. *EIP POLICY CLARITY AND TRANSPARENCY*

KEY FINDINGS:

1. The purpose of an EIP is to identify officers with potentially problematic performance trends before a serious issue arises. An EIP will automatically alert supervisors if certain incidents occur, so that supervisors can provide non-disciplinary interventions, such as counseling or additional training. An effective EIP is an essential component of personnel management for police departments.
2. At the time of DOJ's Phase I report, SPD's EIP was extremely limited and very few officers could be placed into it. Consistent with the Phase I report's recommendations, in October of 2019, SPD revamped its EIP and made it more robust by expanding the indicators and situations that would trigger an EIP alert. Under the new policy, more officers will be able to benefit from EIP.
3. Despite significant improvements to its EIP, SPD's governing policy does not specify: (1) who works with an officer to improve his or her performance, (2) the format of the review session, and (3) the timeline for counseling and intervention. The lack of specificity in the policy makes the process less transparent.

RECOMMENDATION: To improve clarity and transparency of its EIP, SPD should update its policy to articulate and define all processes and the parties responsible for administering and coordinating the EIP.

B. *DIRECT EIP REFERRALS FROM SPD SUPERVISORS*

KEY FINDINGS:

1. There are several circumstances that will lead to an officer being placed in SPD's EIP, which then leads to the officer receiving non-disciplinary intervention. However, a supervisor cannot currently directly place a subordinate officer into EIP.
2. A supervisor often has the most knowledge about a subordinate officer's performance and may recognize problematic behavior trends before EIP is triggered. It is therefore best practice for supervisors to have the ability to place officers directly into SPD's EIP.

RECOMMENDATION: In order to increase efficiency, SPD should permit supervisors to directly refer subordinate officers into EIP.

C. MONITORING AND EVALUATION OF EIP

KEY FINDINGS:

1. SPD's expanded EIP is relatively new—it has only been in operation since October of 2019. Therefore, SPD has limited information with which to assess the effectiveness of its EIP.
2. SPD plans to have its EIP coordinator conduct annual evaluations of the EIP to ensure that it is working effectively.
3. There are additional steps that SPD could consider taking to ensure that its EIP is effective and consistently and uniformly run, including partnering with a third party or establishing an executive committee to formally review and evaluate the EIP, and refining the EIP's methodology and triggers to make them more reliable.

RECOMMENDATION: SPD should continue to monitor and evaluate its EIP to determine whether its procedures and triggers are prompting timely and effective interventions.

D. TYING EIP TO OFFICER WELLNESS

KEY FINDINGS:

1. EIP operates most effectively as a standalone, non-disciplinary system designed to flag problematic officer conduct and behavioral trends, and help supervisors intervene and correct these issues before more substantial problems arise.
2. Some performance problems are linked with job or family stress, trauma, substance abuse, or poor physical health. An EIP that is tied to wellness programs, such as the Employee Assistance Program, may be the most beneficial tool to assist employees facing these types of physical or mental health issues.
3. While EIPs are separate from discipline, an officer's placement in EIP does not mean that the officer cannot be disciplined for conduct that violates departmental rules or policy. Therefore, departments should be transparent about the goals of the EIP system and permit officers to review their own data and request corrections to data they believe has been recorded in error.
4. SPD generally ties EIP to its officer wellness programs. But SPD's EIP policy contains no process for officers to view and raise questions regarding the accuracy of the EIP data contained in their watch files.

RECOMMENDATION: To improve program transparency and legitimacy among its officer corps, SPD should link EIP to its wellness and officer development programs and permit officers to review their EIP files and raise issues regarding the accuracy of EIP data.

VI. RECRUITMENT, HIRING, & RETENTION

A. DEVELOPING A STRATEGIC RECRUITMENT, HIRING, AND RETENTION PLAN

KEY FINDINGS:

1. An effective strategic recruitment, hiring, and retention plan codifies a department's values, and operationalizes its recruitment goals and objectives in clear measurable terms.
2. SPD's Personnel Service has undertaken impressive efforts to recruit a diverse workforce that DOJ's experts have recommended, but not seen, in other jurisdictions, including: (1) conducting extensive hiring workshops to assist candidates in completing the new recruit application process; and (2) conducting surveys of new recruits regarding the pre-application recruitment process.
3. SPD thoughtfully integrates multiple best practices for recruitment including: (1) operating a diverse recruiting team; (2) utilizing a concise mission statement that clearly communicates the values of the department, and what SPD looks for in a candidate; (3) advertising widely; (4) conducting targeted recruitment for gender and minority diversity; and (5) providing a clear pathway for future employment in law enforcement.
4. SPD, despite operating multiple innovative recruiting initiatives, currently lacks a cohesive and comprehensive strategic recruitment, hiring, and retention plan, with clear identifiable hiring objectives and roadmaps for achieving these objectives.

RECOMMENDATION: In order to better coordinate and implement its recruitment strategy, SPD should develop a formal strategic recruitment plan that codifies existing work and expands efforts toward attracting a high-quality, diverse officer corps.

B. COMMUNITY INPUT ON SPD HIRING AND RECRUITMENT PRIORITIES AND STANDARDS

KEY FINDINGS:

1. Police departments should seek public input on hiring to ensure that the department hires candidates who reflect and align with the values of the community it serves.
2. Although SPD's recruiting initiatives exhibit a unified, well-defined sense of the ideal candidates SPD wants to recruit, SPD's recruiting materials did not include any documented efforts to consult community organizations and representatives for their input regarding the "desired candidate characteristics" of the ideal SPD recruit.

RECOMMENDATION: SPD should seek community input on the recruitment and hiring process in order to ensure that SPD reflects the community's values and policing priorities.

C. ELIMINATING UNWARRANTED BARRIERS TO HIRING AND RETENTION OBJECTIVES

KEY FINDINGS:

DOJ's analysis of SPD recruitment and hiring data from 2017 and 2018 revealed:

1. SPD operates multiple workshops and programs aimed at recruiting a diverse pool of applicants and assisting them throughout the hiring process, including: (1) well-advertised Hiring Process Workshops, which assist applicants by explaining each step of the hiring process and advising on how applicants can successfully prepare; (2) practice physical agility tests throughout the year; (3) periodic workshops to help candidates prepare for the PELLET B exam; and (4) programs that provide applicants a window into daily police work through the patrol ride-along program.
2. A higher proportion of Black, Hispanic, and female applicants fail to schedule or take the required PELLET B exam, the standardized test developed by the California Commission on Peace Officer Standards and Training (POST).
3. Black, Hispanic, and female applicants are more likely to fail the PELLET B exam, and nearly 63 percent of Black applicants and 44 percent of Hispanic applicants do not show up for the PELLET B exam, compared to 50 percent of white applicants.
4. Women are more likely than men to fail the Physical Agility Test.
5. Research suggests that police departments could improve recruitment of candidates who traditionally underperform by, for example, reassessing physical agility standards to ensure they appropriately measure the real-world physical demands of the job, and offering training to candidates.

RECOMMENDATION: SPD should identify barriers to hiring and retention that do not serve legitimate policing objectives and adopt measures that reduce unnecessary barriers and assist qualified applicants to succeed at each stage of the hiring process.

D. ENSURING A FAIR AND UNIFORM BACKGROUND CHECK PROCESS

KEY FINDINGS:

1. To ensure that background checks provide effective and fair screening of all candidates, police departments must apply minimum hiring and background standards uniformly regardless of race, ethnicity or gender, and ensure that the standards used do not have an unwarranted disproportionate impact on certain groups.
2. SPD conducts its background investigations consistent with the guidelines of the POST Commission. In 2019, SPD received a positive audit from POST on their background

investigation process. Moreover, DOJ's review of SPD background investigations found that SPD's approach in the vast majority of these investigations was thorough and consistent.

3. In reviewing a random sample of 144 background investigations of SPD recruits, DOJ observed some inconsistencies including: (1) characterizing the academic struggles of a white candidate more favorably than minority candidates with similar academic problems; and (2) permitting a white candidate who was deceptive with investigators to continue in the hiring process but suspending the background investigations of at least 10 Hispanic candidates when deception was detected.
4. DOJ's review of SPD's background check process also revealed multiple instances in which candidates who had family members with criminal backgrounds received less favorable assessments than other candidates.

RECOMMENDATION: SPD should evaluate and standardize its background check process to ensure that its standards are applied fairly and uniformly.

E. STRUCTURED EMPLOYEE EXIT PROTOCOL

KEY FINDINGS:

1. Exit interviews provide police departments with an opportunity to: (1) understand and analyze why departing personnel are choosing to leave; (2) educate employees about how they can return to the department; and (3) encourage employees to promote the department even after they discontinue employment.
2. Most of SPD's employee exit packages contained only perfunctory statements regarding the reasons its employees were leaving service and did not contain written materials documenting a structured exit interview process. As a result, SPD's exit documentation provided little to no insight regarding the reasons why personnel were leaving and what factors, if any, would have enabled SPD to retain the departing employee.

RECOMMENDATION: SPD should conduct structured exit interviews of departing personnel to identify the reasons for attrition.

VII. DATA MANAGEMENT

A. POLICIES AND TRAINING REGARDING DATA COLLECTION AND MAINTENANCE

KEY FINDINGS:

1. Collecting and analyzing accurate data about police operations and crime is imperative for transparency, community safety, and effective policing. Among other things, data can illustrate trends in police interactions, uses of force, and crime.

2. During interviews with SPD rank and file officers, DOJ learned that SPD's data collection and recording is inconsistent—and particularly, that data collected about interactions with persons with mental health or other disabilities and/or persons experiencing homelessness may not always be complete.
3. The accuracy of data concerning police interactions with persons with mental health or other disabilities and/or persons experiencing homelessness is especially important. Individuals suffering from mental health disabilities are more likely to be subject to force. In 60 percent of use of force cases reviewed by DOJ, officers reported that the subject was in some type of altered mental state. SPD's crisis intervention team, or other government services aimed at assisting such persons, should be called upon whenever possible to respond to crisis situations. Collecting accurate data about policing operations is essential to ensuring that SPD's crisis intervention resources are allocated efficiently and effectively.

RECOMMENDATION: To ensure that it has access to accurate data in an accessible, usable format, SPD should create clear operational policies and training that standardize and reinforce how officers collect and record key data.

B. AUDITING DATA MANAGEMENT

KEY FINDINGS:

1. DOJ noted some inconsistencies in the way that key data elements are inputted, which decreases data quality and could make it unreliable. Generally, lack of standardization can make it harder to review and analyze trends.
2. A review of use of force incident data found inconsistent reporting of the underlying alleged offense. This lack of standardization makes it difficult for SPD to effectively analyze the underlying offenses that most commonly are associated with use of force incidents.
3. It is a best practice to conduct audits of data to ensure its accuracy. Regular audits could help identify inconsistencies in SPD's key data elements that inform officers' decision making, tactics, and strategies.

RECOMMENDATION: SPD should regularly audit how it collects, records, and maintains critical data.

C. COLLECTING DATA REGARDING VULNERABLE POPULATIONS

KEY FINDINGS:

1. As discussed above, the 60 percent of use of force incidents that DOJ reviewed involved individuals who an officer perceived to be in an altered mental state.
2. SPD's reports related to interactions with persons with mental health disabilities and/or experiencing homelessness only appear to track the time, date, and location of such calls.
3. Other police departments collect additional information from these interactions, including the outcome of the incident, the age of the person, whether the person is a veteran, whether the individual was injured prior to the police arriving, and whether the interaction resulted in force or injury.
4. Additional context and information about these interactions can reveal trends, and in turn, inform strategies about how to better serve the community in collaboration with relevant government agencies and organizations.

RECOMMENDATION: SPD should consider collecting additional data about how it interacts with vulnerable populations and communities.

D. INTEGRATING UNITS THAT COLLECT, COORDINATE AND ANALYZE CRIME DATA

KEY FINDINGS:

1. SPD's Crime Analysis Unit, Criminal Intelligence Unit, and Real Time Crime Center (RTCC) are all dedicated to data collection and analysis.
2. Despite sharing similar functions, each program falls under a different command. The Crime Analysis Unit is within Support Services, which is part of the Office of Specialized Services. The Criminal Intelligence Unit is part of Internal Affairs and Professional Standards, and falls within the command of the Office of the Chief. The Real Time Crime Center (RTCC) reports to a third command, Detectives, which is part of the Office of Investigations.
3. It is best practice to ensure that these programs are integrated, streamlined, and under the same command. This would allow more opportunity for cross-disciplinary exchanges of information between them.

RECOMMENDATION: To ensure efficient use of crime data, SPD should integrate its Real Time Crime Center, and Crime Analysis and Criminal Intelligence Units under the same command.

E. ADOPTING INSTITUTIONAL CONTROLS TO ENSURE DATA AND TECHNOLOGY ARE USED ETHICALLY AND RESPONSIBLY

KEY FINDINGS:

1. New technology can be beneficial in reducing crime. At the same time, new technology can raise community concerns about privacy, civil liberties, and civil rights. Thus, it is best practice for departments to rigorously vet new technology, obtain insight from experts and community members before implementing it, conduct cost-benefit analyses, and provide the public with the ability to comment on the new technology and related policies.
2. SPD has implemented similar vetting mechanisms and accepted public input on technology in the past. Specifically, in adopting body worn cameras, SPD posted the selection process and draft policy on its website, and solicited public input.
3. Automated decision systems or data algorithms for decision-making (also known as predictive policing), depending on their use, may infringe upon civil rights and liberties and, in some cases, may amplify past racial disparities in the criminal justice system. Thus, any use of these systems should include a robust analysis of the effect on different racial and ethnic groups.

RECOMMENDATION: To ensure that it introduces technology into policing in a safe, transparent, ethical, and responsible manner, SPD should adopt institutional controls, including operational policies, public review bodies, and review processes that analyze and vet policing technology before adopting such technology.

FINDINGS AND RECOMMENDATIONS

LESS-LETHAL FORCE

I. GENERAL OVERVIEW

DOJ's Phase II review examined how SPD officers use less-lethal force, and reviewed a sample of individual use of force incidents to assess whether the force employed during a particular incident was proportional and necessary under the circumstances, consistent with DOJ's Phase I policy recommendations. Less-lethal force describes any type of force not intended to cause death or great bodily injury, and is commonly used in law enforcement to describe a force option that does not involve the use of a firearm or other deadly force weapon or tactic. Less-lethal force includes wrist-locks and other restraint holds, hand and foot strikes, and take-downs. More recently, the less-lethal force term has included various technological advances in less-lethal force including Taser, OC (Pepper) spray, and a variety of projectiles.

In the case of SPD, and most other law enforcement agencies, less-lethal force incidents greatly outnumber deadly force incidents. SPD recorded 819 use of force incidents involving less-lethal force, compared with 18 officer involved shootings involving SPD officers between 2013 and 2018.

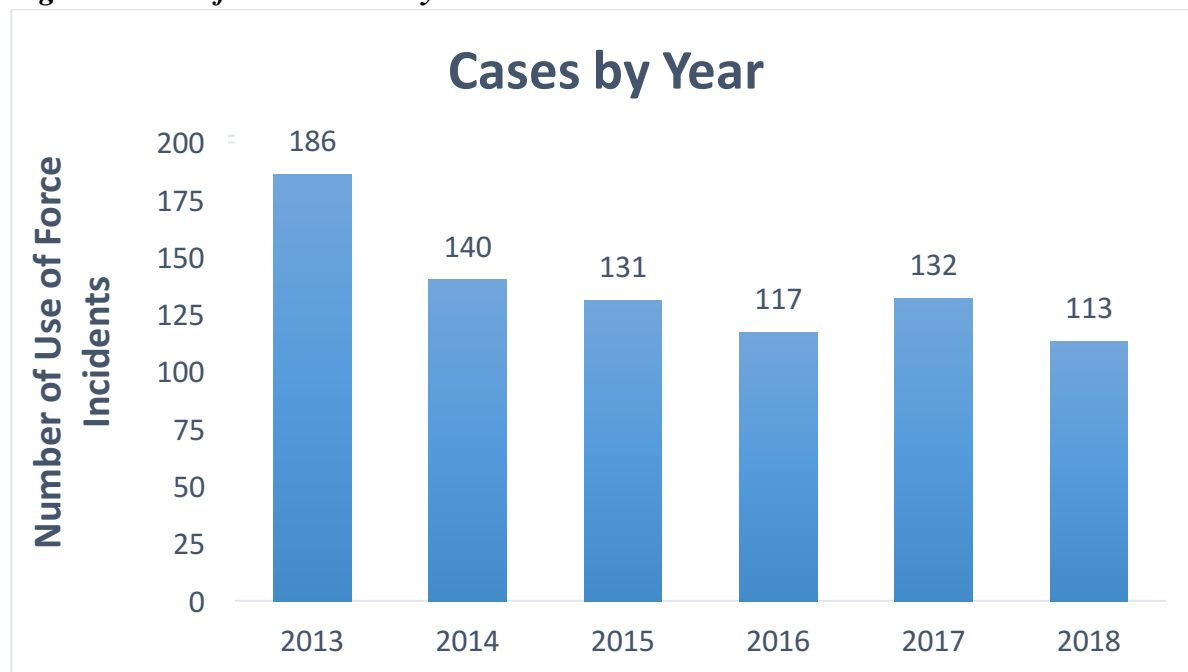
While the term “less-lethal force” implies that the force or weapon deployed is not likely to cause serious bodily injury or death, less-lethal force has no less potential than deadly force to cause injury and damage the relationship between a law enforcement agency and the community it serves. For these reasons, modern policing standards emphasize proportionality (using only the amount of force necessary to effect an arrest, prevent escape, or to overcome resistance) and de-escalation (tactics used to reduce the intensity of a conflict or potentially violent situation in an effort to avoid or lessen the need to apply force) when setting guidelines for using less-lethal force. Moreover, California has embraced limiting deadly force to only those situations in which such force is necessary to defend against an imminent, or immediate, threat of death or serious bodily injury to an officer or the public.⁴ Consistent with these standards, DOJ's Phase I Report recommended that SPD adopt use of force policies that require officers to: (1) exhaust alternatives before using deadly force; (2) use tactical de-escalation and containment techniques

⁴ Assem. Bill No. 392, approved by Governor, Aug. 19, 2019 (2019–2020 Reg. Sess.) [prescribing when a peace officer is justified in using deadly force in California as either: (1) to defend against an *imminent* threat of death or serious bodily injury to the officer or another person, or (2) to apprehend a fleeing person for a felony that threatened or resulted in death or serious bodily injury if the officer reasonably believes that the person will cause death or serious bodily injury to another unless *immediately* apprehended. (Pen. Code 835a(c) [emphasis added].) AB 392 also clarifies that a threat of death or serious bodily injury is “‘imminent’ when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person,” — i.e., a harm “that, from appearances, must be instantly confronted and addressed.” (*Id.* at (e)(2).)]

instead of force to control and detain a suspect; and (3) use force that is proportional to a person's resistance.

Overall, DOJ's review of SPD's less-lethal use of force practices did not reveal a systematic pattern of SPD officers unnecessarily or disproportionately deploying force. Indeed, DOJ's review of use of force data (excluding officer-involved shootings) shows an overall *decrease* in reported use of force incidents over the past six years. (See Fig. 1, *infra*.)

Figure 1: Use of Force Cases by Year



However, DOJ's reviewers observed recurring problematic applications of force and trends in SPD's aggregate use of force data, which further reinforce the policy and training recommendations DOJ delivered in the Phase I Report. The following discussion highlights the trends and observations that appear most salient after a full consideration of the quantitative and qualitative inquiries, and DOJ's recommendations for improvement.

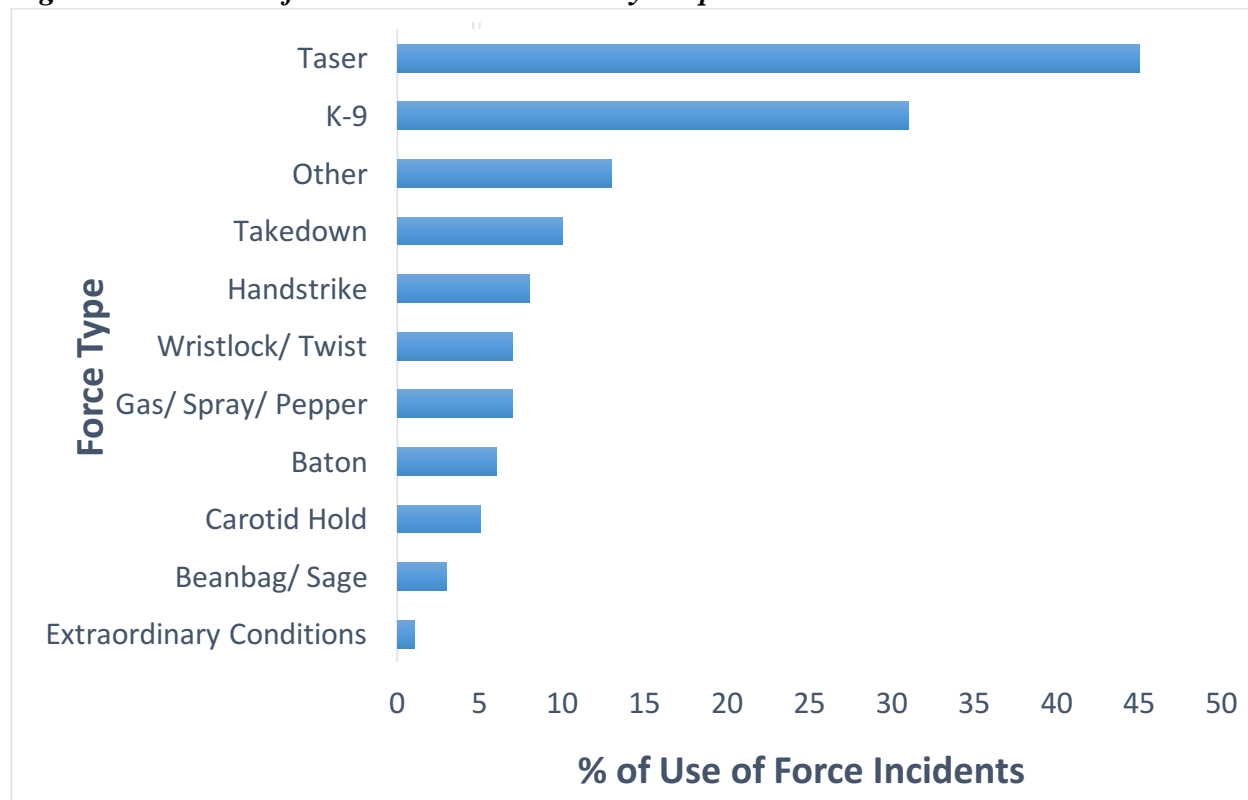
II. OVERVIEW OF ASSESSMENT AND REVIEW PROCESS

For DOJ's Phase II review and assessment of SPD's less-lethal use of force practices, DOJ conducted two concurrent, complementary inquiries.

First, DOJ's Research Center collected and analyzed use of force data across all less-lethal force incidents involving SPD officers between 2013 and 2018. Figure 2, located below, shows the less-lethal use of force incidents sorted by proportion.

The data compiled from this study provides an overall look at trends and patterns with respect to SPD's application of less-lethal use of force over a five-year period. According to this data, Tasers and canine apprehensions were the most frequently used force types. These were followed by incidents where the use of force was classified as "other physical," takedowns, and wristlocks. (See Fig. 2.)

Figure 2: SPD Use of Force Incidents Sorted by Proportion



Second, DOJ's subject matter experts and attorneys reviewed and analyzed a sample of 120 less-lethal use of force incident case files arising from uses of less-lethal force occurring between 2016 and 2018. Because DOJ identified carotid restraint holds as an inherently problematic force tactic in the Phase I Report, this sample was weighted to capture all uses of carotid restraint holds.⁵ This qualitative review involved a comprehensive assessment of incident reports, use of force reporting, investigative reports, and all investigative materials, including relevant audio, video⁶, transcripts, notes, forms documenting injuries, and other relevant records.

Using a survey tool developed by the DOJ Research Center, a group of reviewers, consisting of law enforcement experts from 21 CP and DOJ attorneys (collectively, the reviewers), completed structured, qualitative reviews of less-lethal use of force case files that considered both the performance of the officers in the underlying incident and the quality of SPD's supervisory review of the use of force.

The DOJ Research Center's survey tool was a questionnaire, which posed 24 questions designed to aid the reviewers in identifying and quantifying various facts and circumstances about a use of force incident case file, including: (1) the type of force employed during an incident; (2) whether homelessness, mental health, or substance abuse issues were observed and recorded during an incident; (3) the type of encounter that precipitated the incident (e.g., a request for service, or service of a warrant); and (4) whether the force employed in a particular incident was necessary and proportional under the circumstances, and highlight any tactical concerns arising from the incident. The survey tool also guided the reviewers' assessment of SPD's internal review of each use of force incident through its management structure.

After completing their independent assessments, reviewers convened to discuss their findings and explore any differences in their assessments.

III. REVIEWING STANDARD

DOJ evaluated the force applied in a particular incident to determine whether it was necessary or proportional under the circumstances, consistent with DOJ's Phase I policy recommendations, or problematic.⁷ The review also evaluated the quality of officers' written reporting describing the force incidents, and SPD's supervisory review of the incident—a process in which SPD supervisors evaluate a use of force incident for compliance with training and policy—to

⁵ The sample was weighted by drawing a sub-sample of cases for more in-depth case review. Specifically, DOJ's Research Center first drew a random sample of 100 use of force incidents from all incidents occurring between 2016 and 2018, then included all remaining cases where a carotid restraint hold occurred.

⁶ SPD began employing body worn cameras in or around April 2017.

⁷ DOJ cautions that it did not evaluate, nor was it in a position to determine, whether the use of force employed in a particular incident was lawful under the U.S. Constitution or AB 392. The purpose of this review of less-lethal use of force, by contrast, was to assess whether the force employed was necessary and proportionate consistent with DOJ's policy recommendations delivered in Phase I, and to determine whether SPD's force review process sufficiently identified problematic uses of force and took appropriate remedial action. For these reasons, DOJ reviewers assessed those uses of force that were either unnecessary or not proportional as "problematic."

determine whether these reviews sufficiently identified issues that arose from the use of force and surrounding circumstances, and recommended appropriate remedial action.

IV. PROMISING PRACTICES: NECESSITY AND PROPORTIONALITY

In 82 percent of the cases reviewed, reviewers agreed that—consistent with DOJ’s Phase I recommendations—SPD officers responded to incidents with necessary and proportional force when considering the nature of the underlying offense, the subject’s level of resistance, and the sum of the circumstances. Even in situations of great stress, DOJ observed examples of SPD officers selecting force options that preserved life and delivered force proportionate to the circumstances.

In one incident, an armed robbery suspect, who was suspected of carrying a firearm, refused to comply with the officer’s orders to lie down in a public area with many civilians nearby. Rather than fire a service weapon or release a canine in the populated area, the officer used foot strikes to disable the subject and held him down until other officers arrived to assist in taking the subject into custody.

In another incident, canine officers pursuing a wanted felon with a history of violent encounters with police, used verbal de-escalation techniques to persuade one person to exit the residence. After delivering warnings, the officers eventually deployed the canine who located the subject and bit the subject’s arm. The officers’ use of the canine to locate the subject in this incident is emblematic of the circumstances in which the use of a canine is appropriate. The subject was: (1) known to be dangerous based on past encounters; and (2) hidden in an unfamiliar setting. Still, consistent with DOJ’s recommendations regarding canines as outlined below, SPD should consider transitioning from “find and bite” to “find and bark,” or “circle and bite,” deployment of canines in order to increase the array of force and non-force options officers have at their disposal in similar situations.

V. RECOMMENDATION REGARDING SPECIFIC USE OF FORCE PRACTICES

In cases where reviewers found that at least some force was either unnecessary or not proportional, and therefore problematic, the case incidents often involved use of force practices that DOJ previously identified as problematic in the Phase I Report.⁸ These findings, therefore, reinforce the need to adopt the policy and training recommendations delivered in DOJ’s Phase I Report.

⁸ The use of force incidents examined during this review occurred *before* DOJ delivered its findings and recommendations in the Phase I Report in January 2019.

A. CAROTID RESTRAINT HOLDS

The carotid restraint hold—a restraint technique that was previously sanctioned under SPD use of force policy⁹, is designed to subdue a subject by compressing the carotid arteries without compressing the airway, thereby reducing blood flow to the brain and compromising a person’s control of their body. The carotid restraint hold can also cause a person to lose consciousness temporarily.

Because the carotid arteries are located near a person’s airway, if applied incorrectly, a carotid restraint hold can cut off, compress, or damage the airway, and result in severe injury or death.¹⁰ Thus, even under normal circumstances, the successful and safe application of the carotid restraint hold has a small margin for error. When combined with stresses and the chaos of a hands-on use of force encounter, it can easily result in incorrect application and fatal results.

1. Findings

In its review, DOJ found 11 cases of problematic use of force incidents involving the application or attempted application of a carotid restraint hold. This comprises half of all problematic force incidents. Roughly 35 percent of force involving carotid restraint hold applications reportedly resulted in visible injury, which is comparable to the high rate of visible injury accompanying incidents involving canines (41%), takedowns (35.9%), and hand strikes (33%).

According to DOJ’s aggregate analysis of SPD’s use of force data, apart from beanbag rounds (a projectile baton round that is fired as a shotgun shell), carotid restraint holds resulted in the highest level of admissions to the hospital of any force, suggesting that carotid restraint holds were associated with injuries that are more significant. (See Fig. 3, *infra.*) (*Id.*)¹¹

⁹ On June 8, 2020, SPD revised its use of force policy to remove all references to the carotid restraint hold and has since notified its officers that the carotid restraint hold is no longer an authorized force option within SPD.

¹⁰ See Hall and Butler, Canadian Police Research Centre, National Study on Neck Restraint in Policing (Jan. 2007) pp. 22-23. Available at http://publications.gc.ca/collections/collection_2007/ps-sp/PS63-2-2007-1E.pdf.

¹¹ The rate of injury for wristlocks may be inflated because such maneuvers typically are often used in conjunction with, or in addition to, other force. For example, the wristlock may have been used in an incident that resulted in a reported injury without having *caused* the injury.

Figure 3: Commonly Recorded Citizen Injuries by Use of Force Deployed in the Incident (Ordered from Most Frequently Occurring to Least Frequently Occurring)^{12, 13}

	Percent where medical clearance is required ¹⁴	Percent with a visible injury	Percent where citizen is admitted to the hospital
Taser	46.70%	28.10%	3.90%
K-9	40.70%	41.40%	3.20%
Other Physical	32.30%	36.50%	3.00%
Takedown	35.20%	35.90%	2.80%
Wristlock/Twist	37.60%	32.30%	3.20%
Pugilistic Hand Strike	28.90%	33.30%	3.30%
CS Gas, OC Spray, Pepperball	26.30%	21.10%	3.50%
Baton	31.00%	32.10%	2.40%
Carotid Control Hold	33.30%	34.80%	7.30%
Beanbag, Sage/Arwen	28.20%	46.20%	12.80%
Extraordinary Conditions	35.70%	28.60%	0.00%

These statistics reinforce DOJ's Phase I concerns that the carotid restraint hold poses an unreasonably high risk of injury and death because it is designed to temporarily restrict the flow of blood and oxygen to the brain.

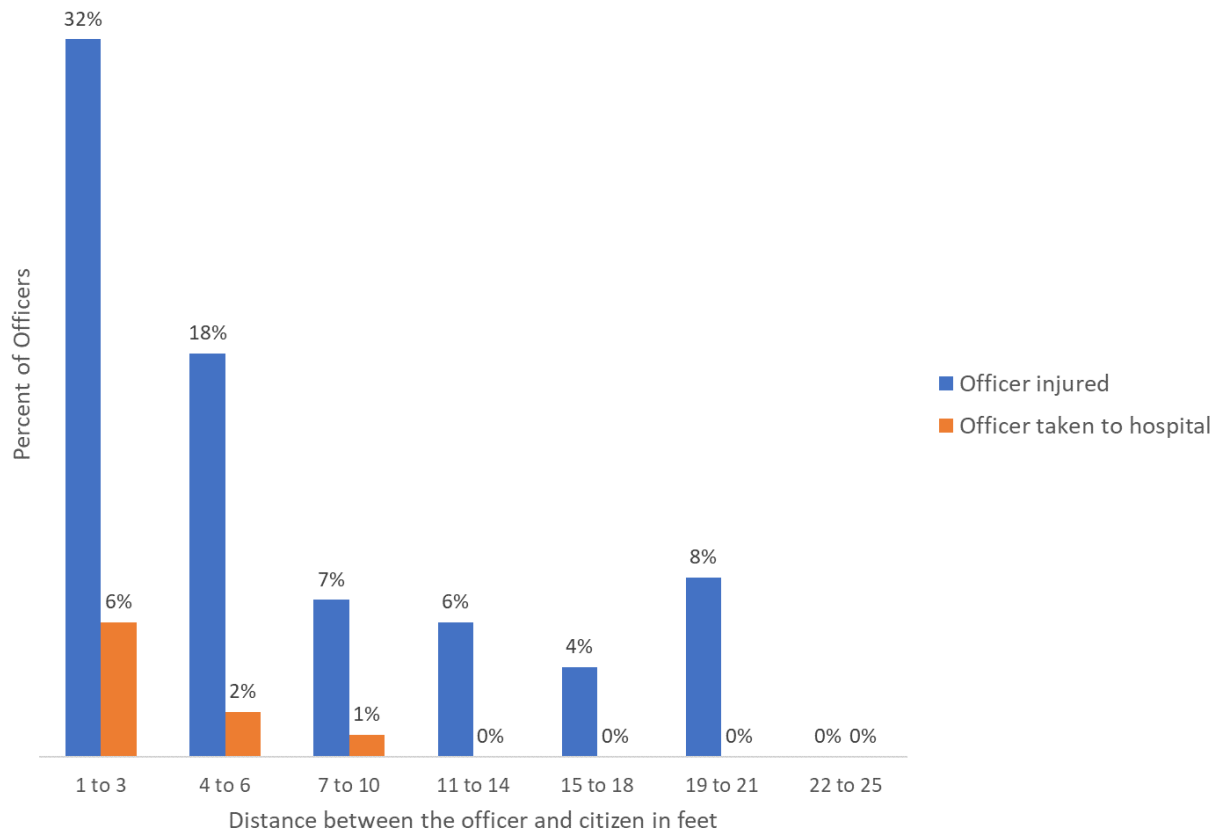
SPD's use of force data also suggests that use of the carotid restraint hold is likely to be associated with an increased risk of injury to officers. (See Fig. 4, *infra.*) Applying a carotid restraint hold requires officers to engage physically with a subject at an extremely close range. Based on SPD's use of force statistics collected between 2013 and 2018, the closer an officer got to a subject, the greater the risk of injury or hospitalization for that officer. (*Id.*)

¹² Percentages do not total to 100%. Data provided by SPD included additional injury categories for certain use of force types.

¹³ The complete chart tabulating the top five recorded citizen injuries by type of force deployed is provided at the end of this report in Appendix A, Table 1.

¹⁴ SPD uses the term "medical clearance required" as a catchall term to track when a subject receives medical attention in the following circumstances: (1) when a subject complains of pain; (2) an SPD supervisor orders medical clearance; (3) to remove probes embedded from a Taser deployment; (4) to treat minor visible injuries; (5) when a subject is involved in a vehicular collision; (6) when a subject loses consciousness (via carotid control hold); and (7) when responding emergency medical technicians determine that a medical evaluation is needed.

Figure 4: Percent of Officer Injured and Percent of Officer Taken to the Hospital by the Distance between the Officer and Citizen During the Incident



In DOJ’s incident level review of SPD’s use of force files, DOJ reviewers observed more than 12 instances in which an officer appeared to have other force options available but chose instead to use the risky carotid restraint hold. Several of these incidents involved a police response to minor violations of law where reviewers considered the force to be disproportionate under the circumstances. In other incidents, officers failed to use de-escalation tactics or to utilize any of a variety of less-lethal force techniques and tools, such as Taser and baton.

While DOJ did not *always* find the use of the carotid restraint hold to be problematic under the circumstances, SPD’s aggregate use of force data indicate that SPD officers have resorted to using the carotid restraint hold more frequently than peer agencies of similar size, and likely more than they ultimately should have given the circumstances. For example, between 2016 and 2018, SPD officers applied carotid restraint holds at an average rate of nine applications per year. By comparison, the Los Angeles Police Department reported an annual average of one carotid restraint hold application between 2008 and 2011.¹⁵

¹⁵ Los Angeles Police Department 2012 Use of Force Report with 2013 Statistical Overview, at p. 9. Available at: http://assets.lapdonline.org/assets/pdf/2012_UOF_Annual_Report.pdf.

2. Recommendation: SPD should affirmatively de-authorize the use of carotid restraint holds.

The incident-level review of use of force cases involving the application of the carotid restraint hold underscores the importance of Recommendation 10.1 of the Phase I Report. That recommendation urged SPD to prohibit the use of a carotid restraint hold and any maneuvers designed to, or that may reasonably result in, cutting off blood or oxygen to a subject's head—a prohibition that multiple major metropolitan police departments have adopted.¹⁶

DOJ recommends that SPD affirmatively eliminate its authorization of the carotid restraint hold as an approved force method, not simply from the standpoint of subject safety but also, crucially, from the standpoint of officer safety, and develop alternatives to the use of such holds. Although officers may need to use a hands-on approach with subjects in some circumstances, SPD can enhance officer safety by establishing specific protocols that de-authorize carotid restraint holds while also ensuring that officers have the tools needed to subdue combative subjects. This can be accomplished by stressing the tactical advantages of other, safer force options, and by creating and maintaining a safe distance between themselves and subjects.

DOJ acknowledges that on June 8, 2020, SPD issued a revised use of force policy, which removed all references to the carotid restraint hold shortly after publicly announcing that it would suspend the use of the tactic. SPD also notified its officers via an email bulletin that it was indefinitely suspending the carotid restraint hold as an approved tactic and no longer authorizing it for use within SPD. While DOJ commends SPD for taking action, its policy revision falls short of what this report recommends because the policy language only omits reference to the carotid restraint hold without also adding express language that affirmatively de-authorizes the use of the carotid control hold and any other physical maneuver that runs a reasonable risk of cutting off the flow of blood or oxygen to the brain.

By expressly stating that the carotid control hold and similar tactics are no longer authorized, SPD will provide clear guidance to officers that the tactic is no longer acceptable, and that using such tactics is a policy violation that may result in disciplinary action. Such a policy revision would remove any doubt that SPD has eliminated the carotid control hold as an approved force option in the eyes of the public and its officers, while ensuring that an appropriate groundwork for accountability is established.

B. FOOT PURSUITS

The foot pursuit—a situation in which an officer, on foot, chases a suspect in an effort to detain that individual—can place the officer, public, and the suspect at significant risk of injury. It is well documented that a substantial number of officer-involved shootings involve foot pursuits; generally, foot pursuits are associated with a high likelihood of the use of force; foot pursuits are

¹⁶ Phase I Report, *supra*, note 1, at p. 25.

associated with substantial productivity losses due to accidental and assault-related injuries to officers; and certain use of force tactics may substantially increase the odds of injury among suspects actively fleeing police on foot.¹⁷ Consequently, the International Association of Chiefs of Police (IACP), has counseled that, “whenever possible, foot pursuits should be avoided.”¹⁸ The IACP further recommends that departments adopt foot pursuit policies that specify (1) the conditions for initiating and terminating a foot pursuit; (2) who may authorize the continuation of, or terminate, a foot pursuit; (3) who is responsible for coordinating the pursuit; and (4) the tactics for ensuring subject, officer and public safety.¹⁹

1. Findings

Of the use of force cases reviewed in Phase II, half of all problematic use of force incidents arose from foot pursuits. In one such problematic incident, an officer initiated a foot pursuit after observing that a pedestrian proceeded too slowly across a crosswalk and failed to respond to the officer’s command to approach. The incident resulted in the officer deploying his Taser to the back of the subject, causing the subject to fall over a railing. In this incident, the decision to pursue the subject was questionable in light of the low-level underlying offense, and it may have contributed to the improper and dangerous application of the Taser to the subject’s back.

Other low-level underlying offenses that led to foot pursuits included panhandling or littering. In another example, the foot pursuit began as an attempted parole search. The risk here is that a foot pursuit prompted by a low-level offense could quickly result in force and injuries that greatly exceed the resistance originally countered, not to mention the unnecessary threat to the safety of the general public.

2. Recommendation: SPD should ensure that its foot pursuit policy sets clear guidelines for initiating and ending foot pursuits.

The IACP recommends that departments develop and train officers on specific procedures and tactics to be used in initiating and carrying out a foot pursuit. Guidelines should cover situations: (1) when a foot pursuit is not warranted based on the conduct observed; (2) where the officer is alone; (3) when there are two or more officers in pursuit; and (4) when there are assisting officers. A foot pursuit policy, and related tactical training, should address safety concerns like avoiding potential traps, leaving a police vehicle accessible, and handling situations where a suspect traverses over a wall or fence, flees from a vehicle, rounds a corner, or otherwise enters a confined space or difficult terrain.²⁰

¹⁷ Kaminski and Rojek, Police Foot-Pursuit Policies, Practices and Training: Findings from a National Survey (2015). Available at https://www.researchgate.net/publication/280829775_Police_footpursuit_policies_practices_and_training_Findings_from_a_national_survey.

¹⁸ Internat. Assn. of Chiefs of Police, Concepts and Issues Paper: Foot Pursuits (July 2019), pp 2-5.

¹⁹ *Id.*

²⁰ *Id.*

C. TASER DEPLOYMENT

Taser is a type of conducted energy device which delivers an electrical current designed to stun or subdue an individual as an alternative to more lethal uses of force.

1. Findings

The Taser was a force type used in forty-one percent of cases that DOJ reviewers determined to be problematic. Of those cases, DOJ reviewers identified three recurring problematic use of force practices involving the Taser: (1) deploying of a Taser at a subject who was fleeing apprehension during a foot pursuit; (2) using Tasers to deliver multiple simultaneous or successive Taser currents on a subject; and (3) using Tasers in drive stun mode.²¹

In one highly problematic case, two officers each used their Tasers in drive stun mode to deliver (some appeared to have been delivered simultaneously) eight combined Taser cycles to the subject while attempting to take the subject into custody for a misdemeanor warrant. This tactic unnecessarily placed the subject (and officers) at greater risk of serious injury, was not effective in subduing the subject, and appeared to exacerbate the subject's resistance rather than facilitate compliance.

2. Recommendation: To ameliorate the unnecessary risk of injury, SPD should restrict officers from using a Taser on a fleeing suspect except when necessary to avoid more lethal uses of force.

Axon, the manufacturer of the Taser, expressly advises that officers should “avoid using a [Taser] on a person . . . unless the situation justifies an increased risk” when the person “is running or moving under momentum.”²² Similarly, the Police Executive Research Forum's (PERF) 2011 Electronic Control Weapons Guidelines instructs that “fleeing should not be the sole justification for using an ECW against a subject.”²³

In line with the manufacturer's instructions and recognized best practices, incapacitating a moving subject with a Taser places subjects at greater risk of falling without bracing themselves and, therefore, suffering injuries that are more severe. Additionally, it is considerably more

²¹ “Drive stun” mode involves placing the Taser in direct contact with the individual and pulling the trigger, causing the electric energy to enter the subject directly as opposed to delivering an incapacitating electrical current by using the Taser to fire probes into the subject's skin from a distance.

²² Taser Internat., TASER Handheld CEW Warnings, Instructions, and Information: Law Enforcement (Oct. 30, 2018). Available at https://axon.cdn.prismic.io/axon%2F3cd3d65a-7500-4667-a9a8-0549fc3226c7_law-enforcement-warnings%2B8-5x11.pdf.

²³ Police Executive Research Forum, 2011 Electronic Control Weapons Guidelines (March 2011) pp. 13, 18, 31. Available at [https://www.policeforum.org/assets/docs/Free Online Documents/Use of Force/electronic%20control%20weapon%20guidelines%202011.pdf](https://www.policeforum.org/assets/docs/Free%20Online%20Documents/Use%20of%20Force/electronic%20control%20weapon%20guidelines%202011.pdf).

difficult for both Taser darts to strike and incapacitate the subject while an officer and subject are both moving.²⁴

SPD's current policy on Taser use mimics PERF's admonition by expressly stating that "[f]leeing shall not be the sole justification for using a [Taser] against a subject." Still to provide clarity to its officers, SPD expressly restrict officers from firing a Taser at a fleeing suspect except when necessary to avoid more lethal uses of force under the circumstances.

3. Recommendation: As recommended in Phase I, SPD should limit Taser use to three, standard five-second cycles and prohibit Taser use in drive stun mode.

The United States Department of Justice's Office of Community Oriented Policing Services' (COPS) guidelines on electronically controlled weapons warns that exposing a subject to a Taser current for more than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury, and for that reason should be avoided.²⁵ For the same reasons, the COPS' guidelines also warn against using a Taser to deploy multiple simultaneous currents to the same subject.²⁶

Moreover, using the Taser in drive stun mode is rarely a safe or effective tactic because, except in rare cases, it relies solely on gaining compliance by inducing pain—a tactic with limited effectiveness—instead of temporarily incapacitating the subject's ability to resist by deploying Taser darts. COPS' electronic control weapons guidelines state:

Using the [Taser] to achieve pain compliance may have limited effectiveness and, when used repeatedly, may even exacerbate the situation by inducing rage in the subject. For these reasons, agencies should carefully consider policy and training regarding when and how personnel use the drive stun mode, and should discourage its use as a pain compliance tactic. Drive stun has an applicable but limited purpose that should be taught, explained, and monitored during [Taser] training and field use.²⁷

²⁴ For a Taser to be effective, both Taser probes must imbed in the subject's skin to complete the electrical circuit necessary to incapacitate a subject and allow officers to bring the subject under control.

²⁵ Police Executive Research Forum, 2011 Electronic Control Weapons Guidelines, *supra*, note 23, at pp. 13, 18, 31. Available at https://www.policeforum.org/assets/docs/Free_Online_Documents/Use_of_Force/electronic%20control%20weapon%20guidelines%202011.pdf.

²⁶ *Id.*

²⁷ *Id.* at p. 14. According to these guidelines, the Taser's "drive stun" may be used for other non-pain compliance purposes: (1) to complete the incapacitating electrical circuit in the event that one of the probes is ineffective or becomes dislodged; or (2) to create space between officers and the subject so that officers can consider another force option. *Id.*

Using a Taser in more than three standard five second cycles, to deliver multiple currents simultaneously or in drive stun mode, is rarely safe or effective. Therefore, consistent with the Phase I recommendations, SPD should expressly prohibit these Taser practices.²⁸

D. CRISIS INTERVENTION

Law enforcement officers have increasingly encountered individuals who are experiencing mental health or substance abuse related behavioral crises. These encounters can be volatile and unpredictable, and without proper training regarding how to address individuals experiencing a behavioral crisis, they may needlessly and unintentionally escalate into encounters involving use of force. CIT teaches officers how to safely de-escalate behavioral crisis situations, helping officers in some jurisdictions avoid injuries. The CIT model also brings together community members and mental health providers to provide options for mental health treatment and reduce calls to police, which may free up police resources to respond to other law enforcement priorities and help keep people with mental illness out of jail.

1. Findings

SPD officers perceived the subject to be in some type of altered mental state in approximately 60 percent of cases. Moreover, the DOJ Research Center’s aggregate review of force data between 2013 and 2018 discovered that roughly one-third of use of force incidents involved citizens under the influence of drugs or alcohol.

The incident-level review of SPD's use of force cases did not indicate that subjects who were observed to be experiencing mental health, drug abuse, or other behavioral health challenges, were substantially more likely to be involved in problematic applications of less-lethal force. Further, as DOJ’s Phase I Report noted, SPD “requires all officers (on a rolling basis) to participate in a 40-hour block of CIT.”²⁹ However, the prevalence of behavioral crises in use of force incidents—whether the result of mental health issues, drug and alcohol use, or a combination of these causes—confirms the need for SPD to devote significant resources toward building and maintaining a robust CIT program.

2. Recommendation: SPD should continue its commitment to Crisis Intervention Training (CIT) for Officers.

Crisis intervention training and additional mitigation skills are critical for officers going forward in managing interactions with individuals in crisis. It is therefore extremely important for SPD to continue its commitment to CIT for its officers.

Moreover, SPD should carefully collect data on the prevalence of behavioral health crises in use of force incidents; use this data to focus its resources; and inform the City of Sacramento (also

²⁸ Phase I Report, *supra*, note 1, at pp. 30-31.

²⁹ Phase I Report, *supra*, note 1, at p. 48.

referred to as the City) of the challenge that behavioral crises, many of which may flow from a lack of access to proper treatment or resources, pose for law enforcement.

E. CANINES

As discussed in the Phase I Report, SPD currently operates its canine units using dogs that are trained according to the “find and bite” method. This means that a canine is trained to bite a suspect once the suspect is located, and virtually ensures that every time a canine apprehends a subject there is a corresponding use of force: the canine biting the subject. The review showed that, among the less-lethal use of force incidents occurring between 2013 and 2018, SPD’s canine deployments ranked second only to projectiles in causing visible injuries. Moreover, uses of force involving canines during the same period required medical clearance nearly as often as Taser applications. (See Fig. 3, *supra*, p. 29.)

1. Findings

In the incident level review, DOJ rarely observed SPD using canines inappropriately.³⁰ This is possibly because the majority of observed canine deployments occurred in relatively controlled circumstances.³¹ These specific canine deployment incidents were often closely associated with the officers’ valid needs to locate criminal suspects believed to be hiding in an enclosed or partially enclosed structure without exposing themselves to unwarranted risk. Thus, the problem is that while SPD almost always deploys its canines for valid reasons, its reliance on “find and bite”-trained canines almost guarantees that deploying the canine—even if appropriate—will result in a bite. This almost predetermined outcome may lead to serious injuries and potential exposure to legal liability, and deprives SPD officers of operational flexibility that could result in a substantial reduction in use of force.

2. Recommendation: SPD should transition its Canine deployment strategy from “Find and Bite” to “Find and Bark.”

Transitioning to a “find and bark,” or “circle and bark,” model would enable SPD to maintain the advantage of using canines to safely locate subjects in areas that are difficult or dangerous to search, and yet preserve the canine handler’s option to use minimal force, or avoid using force altogether, to apprehend and place the subject in custody once located.

Even as that transition occurs, SPD should ensure that SPD officers receive formal guidance on the appropriate use of canines from a tactical perspective to ensure that if SPD chooses to

³⁰ SPD limits canine use to apprehend an individual to the following circumstances: (1) there is a reasonable belief that the individual poses an immediate threat of violence or serious harm to the public, any officer, or the handler; (2) the individual is physically resisting arrest and the use of the canine appears necessary to overcome such resistance; or (3) the individual is believed to be concealed in an area where entry by other than the canine would pose a threat to safety of officers or the public. SPD policy prohibits using a canine to apprehend an individual when a suspect is merely fleeing from pursuing officers. (See Sacramento Police Dept.’s General Order 580.14, subd. B (Feb. 23, 2017) Available at <https://www.cityofsacramento.org/-/media/Corporate/Files/Police/Transparency/GO/Section-500/GO-58014-Use-of-Canines.pdf?la=en>.)

³¹ *Id.*

continue to use “find and bite” canines, the use will be limited to situations in which such force is justified from the outset.

F. DE-ESCALATION

Law enforcement agencies across the country are recognizing the need to de-escalate situations to achieve more positive and less-lethal outcomes. 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. 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.³²

1. Findings

DOJ identified issues with the tactical decisions that SPD officers made in more than half of cases during its incident-level review. Of these incidents, the most common tactical issue related to not using, or failing to fully utilize, de-escalation techniques.³³ In addition, for 13 percent of cases, reviewers identified situations in which officers could have used time, distance, and cover to put themselves in a better position to address the situation. Reviewers also identified other tactical issues, such as the failure to create a perimeter. Also, in a small number of cases, subjects may have had difficulty knowing that officers were police because of the use of an unmarked car, the failure of officers to identify themselves as police, and officers not being in uniform.

Additionally, in multiple incidents officers used force on subjects who failed to comply with their orders but did not otherwise pose any danger to the responding officers or others. In most of these cases, the subject was agitated, under the influence, or experiencing a behavioral or mental health crisis that was or should have been apparent to the responding officers. In these situations, officers could have employed de-escalation options such as time, distance, cover, and using strategic communications skills. After creating space and waiting for back-up to arrive, officers may have been able to take the subject into custody with minimal or no force. Instead, the responding officers’ decisions to immediately intervene and take the subject into custody escalated these situations into encounters with multiple uses of force.

More alarmingly, in a few case files, DOJ identified applications of force where SPD officers intentionally used several force techniques simultaneously (i.e. a beanbag shotgun, a Taser, etc.). SPD referred to this tactic as “overwhelming use of force” in supervisory notes reviewing and critiquing the officers’ conduct. This term appears to be unique to SPD and suggests that SPD

³² See Phase I Report, *supra*, note 1, at p. 20.

³³ While DOJ reviewers identified de-escalation as a tactical issue, this did not necessarily mean that involved officers failed to employ any de-escalation tactics. Instead, it meant that there were missed opportunities in which officers could have reasonably employed de-escalation tactics, or additional or different de-escalation strategies under the circumstances.

formally trains on or has otherwise adopted this technique as a tactical approach, which appears to be directly contrary to the concept of de-escalation.

2. Recommendation: SPD should make de-escalation an affirmative duty.

The above findings reinforce DOJ's Phase I recommendation that "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*."³⁴ It would remain useful for SPD to "develop [] a standalone de-escalation 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."³⁵ The Phase I Report further recommends, "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."³⁶ We reiterate here that SPD should make de-escalation an affirmative duty and should ensure that officers are appropriately trained and supported in de-escalation techniques.

3. Recommendation: SPD should avoid the tactical approach that SPD officers refer to as "overwhelming use of force."

Although officers may encounter circumstances where multiple types of force are necessary to address an immediate or urgent threat, police departments should exercise caution when prescribing or training "overwhelming force" as a tactic. Prescribing or training such tactics may override the guiding principle that officers should use force that is proportional to the threat they are facing.

Accordingly, using multiple, simultaneous applications of force should be confined to rare circumstances where the nature of the threat requires an immediate response by multiple officers. This strategy should not be employed as an affirmative, coordinated police tactic, unless the resistance encountered presents an imminent threat justifying the particular force employed.

VI. RECOMMENDATIONS REGARDING USE OF FORCE POLICY, REPORTING AND CHAIN OF COMMAND REVIEW

In most of the cases reviewed by DOJ, officers submitted use of force reports that were detailed and thorough. In 91 percent of cases reviewed, the review team found that the appropriate SPD chain of command thoroughly reviewed the use of force incident. However, we found some areas for improvement in critical areas of internal reporting and supervisory or chain of command review.

³⁴ Phase I Report, *supra*, note 1, at p. 20.

³⁵ *Id.* at p. 21.

³⁶ *Id.*

A. USE OF FORCE POLICY CHANGES

In September 2019, SPD published a revised use of force policy in General Order 580.02.³⁷ Because SPD released its revised policy during the course of DOJ’s Phase II review, DOJ reviewed and analyzed the revised policy.

1. Findings

Overall, SPD’s new use of force policy appears to be an improvement from its previous version. For example, General Order 580.02:

- Requires officers to consider proportionality when determining whether to use force and to what extent, and instructs officers to use only the level of force to overcome resistance based on the totality of the circumstances (GO 580.02, Policy preamble and (A)).
- Incorporates most of the changes in California’s law on sanctioned uses-of-force, including deadly force.
- Instructs officers to use crisis intervention techniques if they believe they have encountered a mentally ill, developmentally disabled or emotionally disturbed individual ((B)(7)).
- Instructs officers when making use of force decisions to consider whether subjects are physically or mentally incapable of responding to police commands due to intoxication, mental impairment, medical conditions, or language and cultural barriers (Policy preamble).

However, the revised policy does not address a number of issues identified in DOJ’s Phase I Report and it is not entirely consistent with AB 392, which redefined the legal standard for authorized use of force in California.³⁸ For example, as written, SPD’s revised use of force policy does not sufficiently incorporate the concept of “necessity” in its provisions governing the use of deadly force as the Legislature intended.³⁹ AB 392 states:

[A] peace officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that **such force is necessary** for either of the following reasons: (A) To defend against an

³⁷ Sacramento Police Dept. General Order 580.02 (Sept. 18, 2018). Available at <https://www.cityofsacramento.org/-/media/Corporate/Files/Police/Transparency/GO-58002-Use-of-Force-91819.pdf?la=en>.

³⁸ Assem. Bill No. 392, approved by Governor, Aug. 19, 2019 (2019–2020 Reg. Sess.). Available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB392.

³⁹ “As set forth below, it is the intent of the Legislature that peace officers use deadly force only when necessary in defense of human life. In determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case, and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer.” (Pen. Code § 835a (a)(2).)

imminent threat of death or serious bodily injury to the officer or to another person.
(B) To apprehend a fleeing person for any felony⁴⁰

By contrast, General Order 580.02 largely omits the core concept of necessity. It instead permits an officer to use deadly force if “under the circumstances, the officer reasonably believes that the suspect poses an imminent threat of death or serious bodily injury, either to the officer or to others.”⁴¹ General Order 580.02 makes the same omissions in page 4, Section 5, subsections (a) and (c), by omitting that an “officer must reasonably believe, based on the totality of the circumstances, that such force is necessary” when discussing when officers are authorized to use deadly force.

Similarly, General Order 580.02 fails to incorporate AB 392’s language emphasizing the important distinction between the concepts of retreat and tactical repositioning or other de-escalation tactics. Specifically, AB 392 states, “For the purposes of this subdivision, retreat does not mean tactical repositioning or other de-escalation tactics.” SPD’s revised use of force policy leaves out this crucial statement and instead only emphasizes that a “peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.” AB 392’s language distinguishes the concept of retreat from tactical repositioning and other de-escalation techniques. As emphasized in the Phase I Report, the techniques as outlined in AB 392 are critical to reducing potentially unnecessary and disproportionate uses of force.

2. Recommendation: SPD should further modify its use of force policy to better reflect the changes in policy and practice mandated by the Legislature in AB 392, as well as to implement all the recommendations from DOJ’s Phase I Report.

In enacting AB 392, California adopted one of the most progressive use of force standards in the country, and placed new limitations on when peace officers may deploy deadly force. AB 392, among other things, (1) codifies a requirement that deadly force be restricted to occasions in which an officer reasonably believes, based on the totality of the circumstances, that such force is *necessary* to defend against an *imminent* threat of death or bodily injury to the officer or another person; (2) prohibits using deadly force against a person who only poses a danger to themselves; and (3) defines the circumstances in which a threat of harm is considered *imminent*.

DOJ recommends that SPD review its use of force policy to ensure that it incorporates all components of California’s use of force standard and DOJ’s Phase I recommendations. We specifically recommend that SPD revise its use of force policy to sufficiently incorporate AB

⁴⁰ Pen. Code 835a(c).

⁴¹ Sacramento Police Dept. General Order 580.02, subd. (B)(3) (Sept. 18, 2018).

392's concept of necessity, discussed above, in order to ensure officers are complying with the Legislature's mandate.

In addition to necessity, DOJ recommends that SPD adopt AB 392's definition of "imminent" when describing the threat of death or great bodily harm required to justify using deadly force. Adopting AB 392's definition would clarify the circumstances in which deadly force is justified and make SPD's use of force policy more consistent with POST's training on California's deadly-force standard.

AB 392 not only defines "imminent" in detail, it describes circumstances that *do not* qualify as "imminent" for the purposes of authorizing deadly force:

A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the officer or another person. Imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of harm, but is one that from appearances must be instantly confronted and addressed.

(Pen. Code § 835a(e)(2).)

POST has also included this definition in its Learning Portal video explaining California's use of force standard.⁴² By replacing its current definition of "Imminent Threat" with AB 392's definition as provided in Penal Code section 835a(e)(2), and providing regular training on this standard, SPD will ensure officers receive a clear and consistent deadly force definition and standard.

Finally, DOJ recommends that SPD modify its policy setting forth when an officer may discharge a firearm at a moving vehicle. The current General Order states, "When the driver of a vehicle continues to present an ongoing imminent threat of death or serious bodily injury to officers or another person and deadly force is feasible to preserve the lives of the officer or another person."⁴³ DOJ recommends the phrase "deadly force is feasible" be replaced with "the officer reasonably believes that deadly force is necessary" to ensure the policy is consistent with AB 392.

B. USE OF FORCE REPORTING AND CHAIN OF COMMAND REVIEW

Internal reporting and review of uses of force through the chain of command are critical tools for encouraging and monitoring the effective implementation of policies and training. The review

⁴² POST, AB 392 and Peace Officer Use of Force Standards. Available at: <https://post.ca.gov/Use-of-Force-Standards>.

⁴³ Sacramento Police Dept. General Order 580.02, Section 3(c) ("Moving Vehicles") (Sept. 18, 2018).

process contributes to a culture of compliance that is key to the systemic changes that are necessary for reform to truly take hold. If an officer's chain of command is not committed to enforcing compliance with the department's policies through effective review, monitoring, and when necessary, re-training, then the culture of the department will reward the status quo, rather than rewarding improvement in practice.

1. Findings

In 19 percent of use of force cases, reviewers found that the reporting was missing at least some material information. For example, reporting officers failed on occasion to detail basic aspects of a law enforcement interaction such as: (1) the reason for stopping a subject; (2) observations providing insight into the subject's mental state; (3) verbal exchanges between the officer and subject that preceded a use of force; and (4) the subject's physical movements that preceded a use of force.

Moreover, in 12 percent of cases, officers used conclusory language to describe the circumstances justifying their use of force, including using general terms such as "resisting" and "fighting" instead of asserting detailed, specific facts regarding the type of resistance or physical aggression encountered during the use of force incident.

As DOJ emphasized in the Phase I report:

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.⁴⁴

These deficiencies were magnified by the lack of review officers faced following a use of force incident. In about one out of ten cases, DOJ reviewers found that the chain-of-command review was not comprehensive. In these instances, the chain-of-command review did not critically analyze whether an initial stop, detention, or search was justified or address material problems with use of force incidents such as: (1) using a Taser on a fleeing suspect; (2) deploying a "find and bite" trained canine to apprehend a subject despite having already visually located the subject; (3) releasing a "find and bite" canine to apprehend a subject without first giving a warning; and (4) incorrectly classifying a Taser deployment as self-defense when an officer fired his Taser at a fleeing subject.

⁴⁴ Phase I Report, *supra*, note 1, at p. 39.

2. Recommendation: SPD should mandate that officers complete and submit detailed statements describing and explaining their use of force.

The lack of thoroughness and completeness of nearly one-fifth of use of force case files reinforces DOJ's Phase I recommendations regarding use of force reporting. These include that SPD "should create a general order dedicated to use of force reporting and investigations" and require officers provide a more detailed account of the incident including elements such as: (1) the reason for the initial police presence; (2) a specific description of the acts that led to the use of force; (3) a specific description of the resistance encountered; and (4) A description of every type of force used or observed.

Requiring officers to provide thorough descriptions of these incidents will equip SPD supervisors, who review and assess use of force incidents, with a more complete understanding of the incident and why the use of force occurred. This, in turn, will enable supervisors to assess comprehensively whether the use of force was appropriate.⁴⁵

3. Recommendation: SPD should implement a policy that sets forth clear and specific guidelines for how use of force incidents are categorized and reviewed based on those categories.

The lapses in SPD's use of force reporting and chain-of-command review reinforce the need for SPD to adopt a standalone policy and procedures that govern all levels of force investigation, oversight, and adjudication consistent with DOJ's specific Phase I recommendations that SPD:

- Create a general order dedicated to use of force reporting and investigations;
- Categorize reportable use of force into levels based on seriousness;
- Clearly identify non-reportable levels of force;
- Specify the reporting, investigation, and review requirements for each level of force;
- Specify that the Internal Affairs Division serves as the primary hub for coordinating use of force reviews, logging and assigning any incident referred for administrative investigation, and reviewing any administrative investigation even if it has been assigned to a supervisor at the district level; and
- Create a specialized Force Investigation Team (FIT) within the Internal Affairs Division to investigate the most serious uses of force.⁴⁶

⁴⁵ Phase I Report, *supra*, note 1, at p. 34.

⁴⁶ Phase I Report, *supra*, note 1, at pp. 36-42.

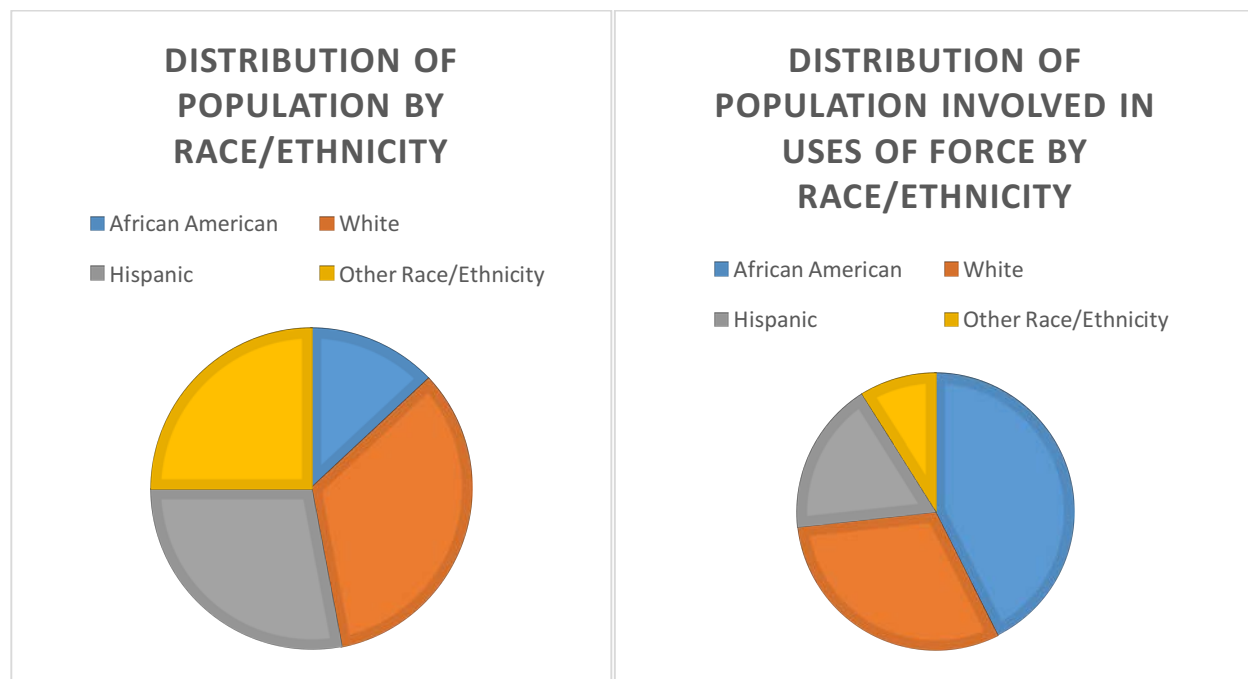
C. RACIAL DISPARITIES IN USE OF FORCE

Racial disparities in policing outcomes, especially in uses of force, is corrosive of the public trust between law enforcement agencies and the communities for which they are responsible. An important component of DOJ's review of SPD was a comprehensive analysis of racial disparities in uses of force.

1. Findings

DOJ's Research Center reviewed aggregate data depicting the distribution of SPD uses of force (between 2013 and 2018), and arrests and vehicle stops (between 2016 and 2018) among the predominant races and ethnicities in Sacramento. With respect to uses of force, this data reveals African Americans account for the largest share of persons involved in SPD use of force incidents between 2013 and 2018 at 43 percent, while whites followed at 31 percent, and with Hispanics at 18 percent. These statistics also reflect a racial disparity when compared to Sacramento's population demographics, given that African Americans constitute 13 percent of the population, whites constitute 34 percent of the population and Hispanics constitute 28 percent of the population.⁴⁷ (See Fig. 5, *infra*.)

Figure 5: Distribution of Population and Uses of Force by Race/Ethnicity

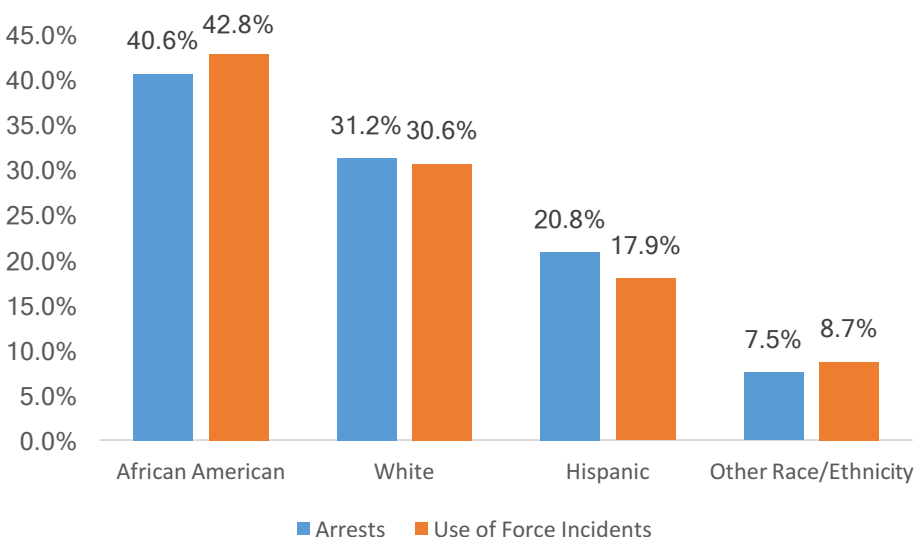


⁴⁷ See U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Data Profile. Available at: <https://data.census.gov/cedsci/table?id=ACS 5-Year Estimates Data Profiles&table=DP05&tid=ACSDP5Y2015.DP05&g=1600000US0664000&hidePreview=true>.

This disparity, however, does not definitively prove that biased policing is causing the disparities in distribution of SPD uses of force by race and ethnicity because the aggregate data do not permit a comparison of whether officers used force at different frequencies according to race or ethnicity in similar circumstances.

In fact, these racial disparities appear to recede when comparing the distribution of uses of force by race and ethnicity to the distribution of arrests by race and ethnicity instead of comparing it to population. According to the data, African Americans accounted for 41 percent of all arrests, whites accounted for 31 percent of arrests, and Hispanics accounted for 21 percent of arrests, which closely tracks the distribution of uses of force per race and ethnicity. (See Fig. 6, *infra*.)

Figure 6: Comparing Distribution of Arrests and Uses of Force by Race/Ethnicity

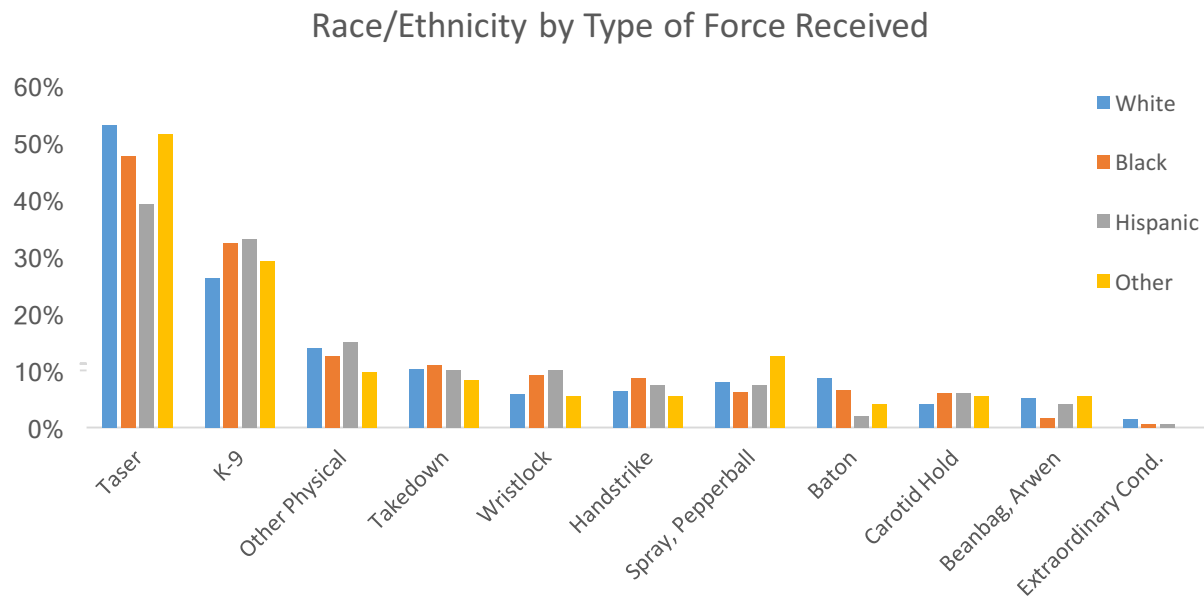


Considering that the vast majority of force applications involve an arrest (over 95%), the lack of disparity across race and ethnicity arising from this comparative model may raise multiple interpretations: (1) that there is no pattern of SPD officers deciding whether to use force in a racially disparate manner; (2) that racial disparities in the use of force may be resulting from the racial disparities in frequency of stops and arrests; and/or (3) that resisting arrest charges asserted after a use of force are responsible for an increase in the percentage of African Americans arrested and disguising disparities in the use of force when compared to arrests. Still, the aggregate data does not provide any conclusive answer regarding the cause of these discrepancies.⁴⁸

⁴⁸ The DOJ Research Center looked for indications that SPD officers were justifying using force after the fact by calculating the percent of incidents where resisting arrest was among the charges, where resisting arrest was the only charge, as well as the average number of charges per incident and comparing these percentages across race and ethnicity. This data revealed that most use of force incidents resulted in a resisting-arrest charge, with the percentage for African Americans (73.5 percent) being slightly higher than for whites (67.8 percent). Similarly, the percent of cases in which resisting arrest was the only listed charge was slightly higher for African Americans (10.5 percent of cases) relative to whites (7.5 percent of cases.) However, the differences in these percentages were not statistically significant.

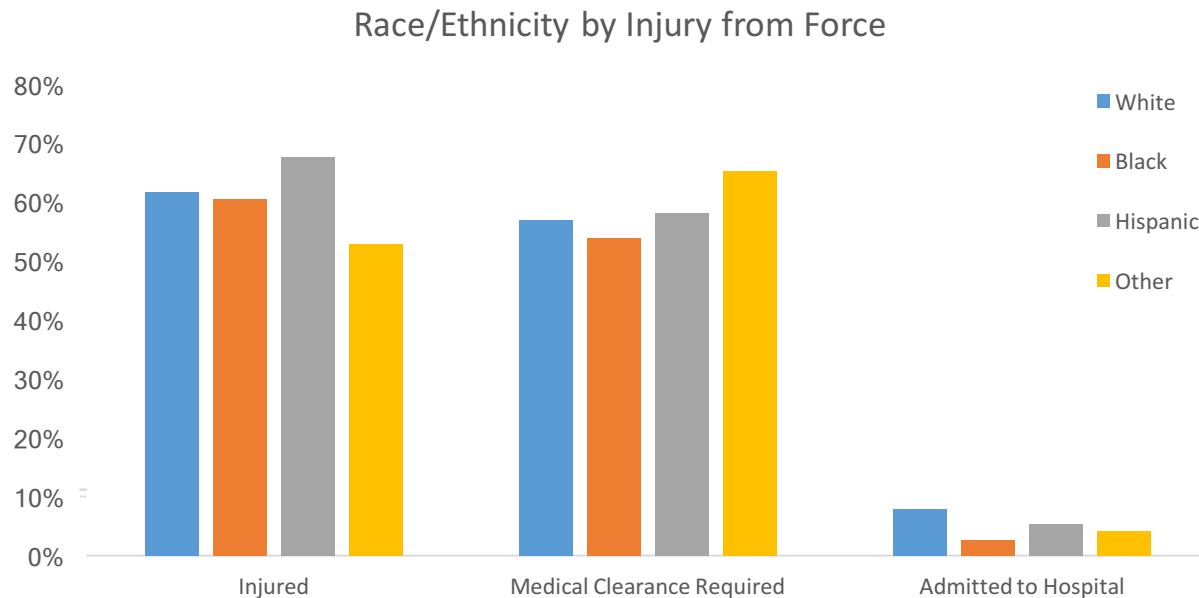
In addition, the DOJ Research Center’s analysis comparing the rates at which SPD used each type of force (excluding firearms) against racial/ethnic groups revealed only subtle differences. Here, the Research Center used statistical models to test directly whether these differences could be attributed to chance alone, specifically comparing force used against white individuals to force used against non-white individuals. The analyses showed that officers were less likely to use a Taser or baton on Hispanic individuals compared to White individuals. Beanbags and projectile launchers (Sage/Arwen) were also less likely to be used on African Americans than whites. (See Fig. 7, *infra*.)

Figure 7: Race/Ethnicity by Type of Force Received



Injury rates were also similar across all racial and ethnic groups. These results suggest that, at least for SPD, the type of force used by officers and the rate of citizen injury may not differ substantially across race and ethnicity. (See Fig. 8, *infra*.)

Figure 8: Race/Ethnicity by Injury from Force



Still, it is important to recognize that the arrest-frequency data itself shows that African Americans are arrested in disparate numbers when arrest data is compared to population data. Thus, while the data does not establish that discriminatory application of force is causing racial disparities in use of force rates, such disparities may be resulting from the racial disparities in frequency of stops and arrests.

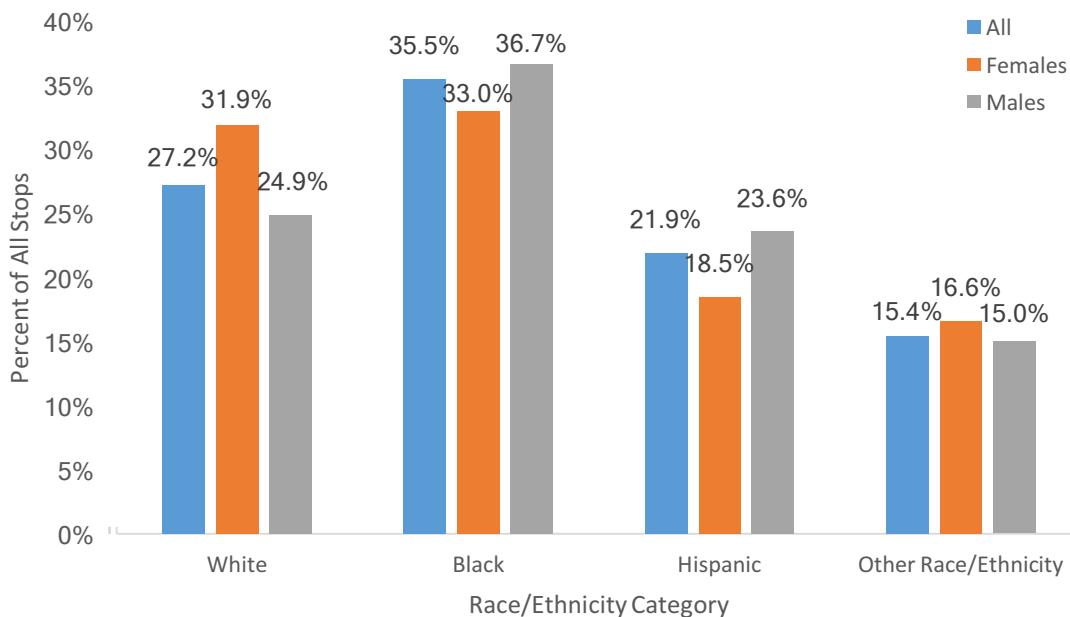
DOJ Research Center's analysis of vehicle stop data also shows that SPD stopped African Americans at a higher frequency than other races and ethnicities, and in a disproportionate rate when compared to population levels.⁴⁹ In 2017, the census bureau estimates that non-Hispanic whites accounted for approximately 34 percent of the resident population of the city of Sacramento.⁵⁰ By contrast, white drivers represented 27 percent of all stops. Approximately 13 percent of the resident population of Sacramento self identifies as "black or African American alone", while black drivers account for 35.5 percent of all stops. The racial disparity between percentages of stops becomes even more pronounced when comparing white males (25 percent

⁴⁹ In 2018, DOJ's Research Center obtained vehicle stop data covering a period of 24-months from the City of Sacramento's Open Data website. (See City of Sacramento, Sacramento Police Vehicle Stop Data. Available at: http://data.cityofsacramento.org/datasets/a8cb4c137c824e939dca586c6dc77da9_0/data.) The data analyzed by DOJ's Research Center predates SPD's stop data collection mandated under the Racial and Identity Profiling Act of 2015 (AB 953) and therefore only included data regarding vehicle stops, not the broader scope of stop and detention data mandated under AB 953. For transparency, SPD also included a link to the available data under the transparency section of their webpage. (Sacramento Police Department, Vehicle Stop Data Collection. Available at: <https://www.cityofsacramento.org/Police/Transparency/Vehicle-Stop-Data-History-and-Information>.)

⁵⁰ The population figures above were drawn from the Census Bureau Quick Facts query tool at the following webpage. <https://www.census.gov/quickfacts/fact/table/sacramentocitycalifornia/PST045217>. This query was accessed in July 25, 2018.

of stops) to black males (37 percent of stops). Self-identified Hispanics account for 28 percent of the resident population of the city compared to 22 percent of all stops.⁵¹ (See Fig. 9, *infra*.)

Figure 9: Percent Distribution of Stops by Race/Ethnicity



⁵¹ The data also revealed disparities in the reasons triggering the stop. African Americans and Hispanics are more likely to be stopped for reasons where officers exhibit more discretion in the decision to make a stop, such as vehicle registration or a required equipment violation. The proportion of stops for a registration or equipment violation is highest for black males (accounting for 65 percent of stops of black males), followed by black females (57 percent of stops), Hispanic males (55 percent of stops). By contrast, the proportion of high discretion stops for white male motorists was 44 percent and white females was 38 percent. (See, *infra*, Appendix A, Table 2.) African American motorists were also less likely than white motorists to be stopped for moving or hazardous driving violations of the vehicle code. (*Id.*). The data also showed that searches arising from high discretion stops such as equipment/registration violations were principally responsible for the relatively lower contraband discovery rate observed for searches of African Americans.

Additionally, the data shows that SPD stops of African American and Hispanic drivers are most likely to result in a search of the driver, a passenger, or the vehicle, than in stops of white motorists. These disparities in the likelihood of being searched may be attributed either to probation or parole searches⁵² or searches based on probable cause or reasonable suspicion.⁵³ For instance:

- Three percent of stops of African American males result in a search based on probable cause, compared to 1.1 percent for white males; and
- 1.4 percent of stops of African American males result in a search based on reasonable suspicion, compared with 0.8 percent for white males.

Yet searches of African Americans were significantly less likely to yield a discovery of weapons or contraband (things that are unlawfully possessed) than searches of white motorists.

Specifically, while 67.2 percent of searches of white motorists failed to discover weapons or contraband, 75 percent of searches of African American motorists discovered nothing. Indeed, these low contraband discovery rates were even more pronounced when the initial reason for the encounter was a high-discretion stop for an equipment or registration violation. This pattern is similar to what has been observed among agencies that have already reported data to DOJ in compliance with the 2016 Racial Identity and Profiling Act (AB 953)⁵⁴ and in an analysis conducted by the Los Angeles Times of stops made by the Los Angeles Police Department.⁵⁵ These patterns suggest that SPD officers may be employing a more stringent standard for initiating searches of white motorists than African American motorists.

Together, the aggregate data suggest that racial disparities arising in the frequency of SPD's uses of force are more likely being generated by racial disparities in SPD's stops and arrests than from SPD officers deciding to exercise force according to unconscious or conscious racial or ethnic biases. In other words, it may be that because African Americans are stopped and arrested at

⁵² It should be noted that DOJ's Research Center did not compare the parole and probation rates among Sacramento residents across race and ethnicity. Therefore, the apparent racial disparities in parole and probation searches cannot be definitively linked to race. DOJ urges SPD to examine this data to determine whether certain races or ethnicities are over-represented in the frequency of SPD parole and probation searches when that figure is compared to the distribution of probationers and parolees across race and ethnicity.

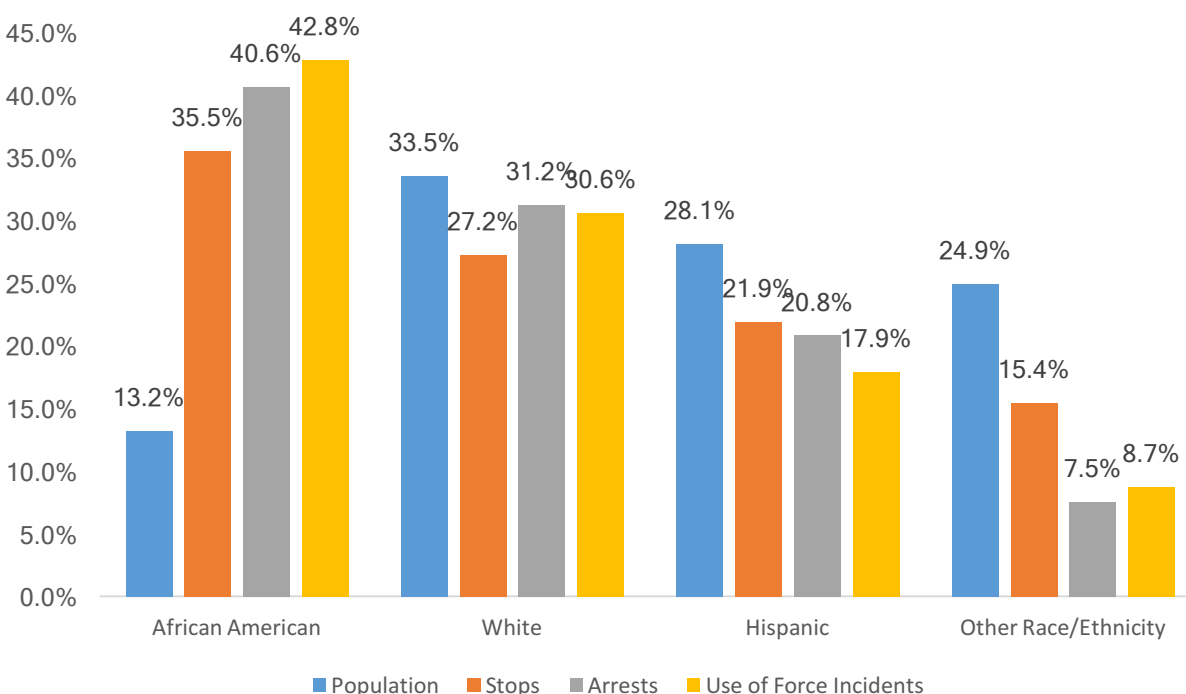
⁵³ Officers may perform searches of supervised offenders (individuals who are released from incarceration on parole or serving a probation sentence in lieu of incarceration) without a warrant because these offenders have agreed to warrantless searches as a condition of being granted probation or parole in lieu of incarceration. By contrast, "probable cause" is the standard under the Fourth Amendment of the U.S. Constitution, for officers to conduct a search when a person has a reasonable expectation of privacy in the item or place being searched. (See generally *Carroll v. United States* (1925) 267 U.S. 132 [probable cause that vehicle contained contraband required to search a vehicle without a warrant].) The constitutional standard for an officer to stop, detain, and conduct a "pat-down" search for weapons without a warrant is "reasonable suspicion." (See *Terry v. Ohio* (1968) 392 U.S. 1, 20-22.)

⁵⁴ See Racial & Identity Profiling Advisory Board, Annual Report (Jan. 1, 2020), pp. 34-40. Available at: <https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2020.pdf>.

⁵⁵ See Posten and Change, *LAPD Searched Blacks and Latinos More. But They're Less Likely Have Contraband than Whites*, L.A. Times (Oct. 8, 2019). Available at: <https://www.latimes.com/local/lanow/la-me-lapd-searches-20190605-story.html>.

much higher and disproportionate rates (whether because of biases or not), the aggregate use of force rate is also higher and disproportionate. (See Fig. 10, *infra.*)

Figure 10: Percent Distribution of Population, Vehicle Stops, Arrests and Involvement in Uses of Force by Race or Ethnicity



2. Recommendation: SPD should conduct an analysis of potential racial disparities with respect to its use of force. If such a study identifies areas of disparate impact, SPD should explore effective, alternative approaches or strategies that could reduce the disparity while ensuring officer, subject, and public safety.

DOJ’s review of this data does not definitively explain why there appears to be a correlation between racial disparities in stops, arrests, and uses of force—or even if the disparities result from racial biases. DOJ therefore recommends that SPD conduct a comprehensive race and ethnicity analysis of use of force data, along with stops, searches and arrests data with the goal of identifying and isolating the factors causing these disparities.

DOJ is aware that SPD is already collecting and reporting substantial amounts of data regarding the circumstances in which it stops, detains, and uses force against individuals under its obligations under the Racial and Identify Profiling Act (RIPA). (Gov. Code §12525.5, Pen. Code §§ 13010 and 13519.4.). DOJ encourages SPD to likewise analyze this data to uncover the causes of the racial disparities that surfaced in DOJ’s aggregate review of the data.

If SPD fails to address these disparities, it will diminish public trust and confidence and may bring into question the very legitimacy of the police department and criminal justice system. In contrast, if SPD undertakes such a study, it may reveal data and trends that could serve as the foundation for developing methods and systems for reducing disparities in stops, arrests, and force; help build a stronger partnership with communities that are disproportionately impacted by such disparities; and strengthen SPD's legitimacy within the community as a whole.

BIAS PREVENTION

I. GENERAL OVERVIEW

A series of highly publicized police shootings of unarmed Black men occurring across the United States over the past decade have kept the issue of bias in policing, and how to mitigate it, in sustained focus. Complicating this issue is the reality that there are two types of bias: conscious (explicit) bias and unconscious (implicit) bias. Explicit biases are “conscious attitudes, stereotypes and beliefs that individuals are aware of and “own” as part of their worldview. Implicit bias is made up of unconscious or semiconscious attitudes that influence behavior.”⁵⁶ Implicit biases may be informed by unfamiliarity with other cultures or races, limited experience with various groups, or cultural and other shared associations between particular types of people and particular characteristics.

Bias is not a problem unique to policing. Studies have demonstrated the effects of bias, including subconscious or implicit bias, among doctors, teachers, lawyers, and judges. Bias is not restricted to race and can involve many other characteristics, including gender, sexual orientation, and socioeconomic status.

Police regularly interact with, and must make critical decisions about how to address, individuals who they have never met. The need to make determinations about how to safely address issues while in possession of relatively minimal information can create an environment in which bias enters into the decision-making process—even among individuals who are otherwise expressly committed to fair and equal treatment.

Because the decisions that police make are often of great consequence, including whether to exercise deadly force, officers and departments have the responsibility to take all reasonable measures to ensure that bias does not influence policing decisions, especially the decision to use force. The outcomes of decisions based on bias can have severe and unjust consequences—for *both* the individual subject to the force and for that person's community. Stated another way, while the existence of bias undermines the credibility and legitimacy of police in the community,

⁵⁶ Mitchell and James, *Addressing the Elephant in the Room: The Need to Evaluate Implicit Bias Training Effectiveness for Improving Fairness in Police Officer Decision-Making* (Nov. 28, 2018) Police Chief Online. Available at <https://www.policechiefmagazine.org/addressing-the-elephant-in-the-room/?ref=805f2482a67f556b22150760446857c9> (as of June 22, 2020).

a concerted effort to acknowledge and counter bias and its impact on law enforcement decision-making can create a culture of community-oriented and culturally-competent policing that makes for safer and healthier communities.

The necessity and urgency of reducing bias in policing is further complicated by a lack of compelling scientific consensus supporting the effectiveness of any particular method of training or technique in reducing the impact of unconscious bias on policing decisions. Studies conducted over the past two decades have not conclusively shown that any one type of training or curriculum is more effective at reducing bias in policing decision-making than others. In fact, these studies have yielded varied results regarding the potential for training to eliminate or prevent bias. For instance, a 2005 study showed that police participants initially exhibited bias “against black suspects in shooting decisions at the start of testing (i.e., they were significantly more likely to mistakenly press a button labeled “shoot” when rapidly presented with an image of an unarmed black suspect than an unarmed white suspect).” But after “extensive exposure” to the testing program, officers reduced the number of mistakes that previously indicated a bias against Black suspects.⁵⁷ In contrast, a 2015 study showed that increasing officer awareness of stereotyping may have the unintended effect of normalizing bias by eroding trainees’ guilt and motivation to overcome implicit bias.⁵⁸ Thus, it should come as little surprise that while many departments, including SPD, have adopted training and policies aimed at reducing the influence of bias, it is not yet clear whether they are effective.

II. OVERVIEW OF ASSESSMENT AND REVIEW PROCESS

During Phases I and II, DOJ reviewed the training curricula for all training currently used by SPD to address bias in policing, including training addressing:

- Cultural Diversity (LD42);
- Fair and Impartial Policing; and
- Racial Profiling.

In addition, DOJ attended SPD’s Academy Cultural Diversity Training and participated in a demonstration of SPD Academy’s Force Options Simulator where recruits are provided scenario-based training in dynamic, virtual environments that create varying outcomes based on the choices that trainees make.

III. PROMISING PRACTICES

SPD includes bias as an element of its current officer training. As discussed in Phase I, SPD consistently requires that officers and recruits complete more training than is required by POST.

⁵⁷ *Id.* (discussing Plant and Peruche, *The Consequences of Race for Police Officers' Responses to Criminal Suspects* (2005) vol. 16, No. 3, Psychol. Sci. 180).

⁵⁸ *Id.* (referencing Duguid et al., *Condoning Stereotyping? How Awareness of Stereotyping Prevalence Impacts Expression of Stereotypes* (2015) 100 J. Applied Psychol. 343).

SPD's Academy recruits are required to take 40 hours of training in Cultural Diversity, Implicit Bias, Procedural Justice and Racial Profiling. Consistent with RIPA, SPD also requires its officers to participate in Racial Profiling and Implicit Bias Training every other year after graduating from the Academy. SPD's training curricula addressing implicit bias are largely grounded in well-established lessons regarding: (1) understanding what bias and implicit bias are and that all people have them; (2) the impact that bias has on perceptions and actions; (3) identifying strategies that help trainees become aware of their own biases; and (4) techniques for limiting bias's impact on policing.

SPD is also exploring ways to incorporate bias prevention into other training disciplines, including its force simulation training. SPD's Academy currently uses a Force Options Simulator (FOS) for officers to simulate force responses. The FOS creates an immersive and interactive training environment via a 180-degree array of screens in which trainees use calibrated replica firearms and less-lethal training devices (such as Tasers and pepper spray) to reproduce stressful scenarios that can lead to uses of force or other outcomes depending on the training goals. The FOS simulates scenarios that test officer awareness, weapons training, force tactics, and de-escalation techniques. While operating in a simulator, trainees are confronted with situations that unfold based on the choices the trainee makes during the scenario. The instructor, who controls how each scenario unfolds, assigns positive outcomes to good techniques or negative outcomes to call attention to mistakes.

The FOS unfortunately is not equipped with programs that are developed to test or demonstrate how unconscious bias can affect use of force decision-making, such as through "shoot/don't shoot" drills. The current program is also not sufficiently nimble to test trainee bias mitigation skills by, for example, changing the ethnicities or genders of the actors in a given force scenario. However, DOJ understands that SPD is working with POST to secure Virtual Reality headset equipment and software that will give SPD the production flexibility necessary to incorporate bias prevention training into its force simulation curriculum.

Finally, DOJ understands that SPD is collaborating with academic institutions to evaluate its implicit-bias training and to analyze patterns in police-community interactions during vehicle stops and other incidents. Specifically, under a grant from the National Institute of Justice, Washington State University will be conducting a randomized controlled trial study to assess the comparative efficacy of classroom-based and simulation-based implicit bias training with the goal of improving fairness in officer decision-making and community perceptions of police legitimacy. And, Dr. Jennifer Eberhardt, a leading expert in policing and bias, and Stanford University will be studying police-community interactions around critical incidents by evaluating body-worn-camera footage from vehicle stops and critical incidents, and using the insights gained from the study to develop new scenario-based training for SPD. SPD's participation in both of these studies underscore its commitment to identifying, developing, and testing ideas for preventing bias in policing.

IV. RECOMMENDATIONS FOR IMPROVEMENT

1. **Recommendation: SPD should regularly review and update its implicit-bias-training lesson plans and materials to ensure that they reflect POST and SPD curricula and core principles.**

As discussed in Phase I, SPD does not have a formal process to create, review, and approve the lesson plans for the POST and non-POST courses it teaches. Without such mechanisms, SPD cannot ensure that the classroom training reflects the core values and concepts that SPD and POST seek to convey in their training. As a result, many of the videos presented during these trainings bore a minimal relationship to the core principles underpinning cultural diversity and implicit-bias training, and in some cases undermined them.

The cultural diversity course, for example, incorporated a *60 Minutes* interview with Chris Rock, a black comedian known for telling inflammatory jokes about racial differences. While the video was ostensibly shown to emphasize diversity in cultural experience and backgrounds, its relationship to the course subject matter was tenuous at best, and it was not apparent how the video enhanced the course discussion about race and cultural diversity. Moreover, there was little to no critical discussion about the video that placed Rock's humor in a context that emphasizes either the harmfulness of racial stereotypes or the positive contributions of individuals who come from different backgrounds. As a result, the video may have the unintended result of conditioning trainees to accept harmful and offensive stereotypes so long as they are used for humor. Such conditioning could undermine SPD's efforts to develop law-enforcement professionals who treat community members of all cultures and backgrounds with respect.

Another video shown in the course that appeared unmoored from the core principles outlined in the cultural-diversity-training curriculum was a documentary about the Los Angeles Police Department. The documentary addressed the Rampart scandal, in which multiple officers working in a high-crime, low-income, community of color, operated with impunity and engaged in corrupt activities instead of forging connections with the community to target crime and protect its residents. The Rampart scandal, and other more recent policing scandals, can be sources for valuable lessons about policing in communities of color, policing ethics and culture, and procedural justice and legitimacy. But, in the training DOJ observed, the lesson plan distilled the Rampart scandal into a simplistic "few bad apples" message, spoiling the potential morals to be learned from the incident. SPD should refine the lesson regarding the Rampart scandal (or other relevant police scandals involving similar themes) to better illustrate the core concepts of its cultural-diversity-training curriculum, and to emphasize the public-safety benefits of effective and respectful policing practices, such as forging connections with marginalized communities.

Accordingly, DOJ recommends that SPD review and update its lesson plans and presentations of its classroom courses on cultural diversity, implicit bias, and racial profiling to ensure that the media, interactive exercises, and discussions reflect both SPD's values and the core concepts of

the training curricula. In addition, SPD should conduct routine spot audits of lesson plans and classrooms at regular intervals to evaluate these courses.

2. Recommendation: SPD should continue to provide robust training exercises that focus on de-escalation, tactical repositioning and techniques that may also reduce threat-perception failures.

SPD is already taking substantive steps to enhance its simulation training capabilities by incorporating virtual reality. To further build on this type of training model, SPD should also consider using simulation training to incorporate training scenarios that can test implicit bias. These simulations may also enable instructors to show trainees how using tactics such as time, distance and cover may help them to avoid decisions based on bias. For example, such training can emphasize how using cover provides the officer with time to visually ascertain whether a subject is carrying a firearm or a benign object.

Another benefit of using the techniques of de-escalation (including time, distance, cover, and tactical repositioning to avoid use of force in volatile situations) is that they may reduce the influence that bias has on force decisions. A 2016 study observed:

Policies that emphasize the use of more de-escalation techniques or gathering of individuating information before force is employed, particularly for racial minorities, may be particularly effective....⁵⁹

PERSONNEL COMPLAINTS AND INVESTIGATIONS

I. GENERAL OVERVIEW

Accountability and trust are vital and indispensable components of an effective relationship between a police department and the community it serves. A robust internal affairs department and investigative process supports these needs by helping a department identify and correct personnel misconduct before it develops into a systemic problem. Conducting fair, impartial and prompt investigations into allegations of officer misconduct gives effect to departmental policies by holding personnel accountable for violating them. It also demonstrates to the community that the department is willing to enforce the law equally against its own. Consistent enforcement of its own policies and standards serves to reinforce and instill SPD's mission and values, and to promote procedural justice. In doing so, the department engenders public confidence and trust from the community it serves. Furthermore, a well-run system provides the community an opportunity to provide vital input to SPD regarding its priorities and concerns, and gives members of the public an outlet for constructively communicating their law-enforcement-related grievances.

⁵⁹ Kahn et al., *How Suspect Race Affects Police Use of Force in an Interaction Over Time* (2017) vol. 41, No. 2, L. & Hum. Behav. 117. Available at <http://dx.doi.org/10.1037/lhb0000218>.

An effective personnel-complaint system should include, at a minimum, the following elements: (1) an intake system that encourages and accepts all complaints regardless of the source; (2) a centralized process for tracking complaints and assigning investigations of the complaints to appropriate personnel; (3) an investigation protocol that ensures that all complaints made by members of the public and all internal complaints, especially those of a serious nature, are investigated; and (4) regular auditing of investigation files to ensure that personnel complaints are investigated and resolved in a thorough, fair, and timely manner.

II. OVERVIEW OF ASSESSMENT AND REVIEW PROCESS

DOJ evaluated SPD's Personnel Complaint and Investigation System and Practices by reviewing and assessing all available formal complaint investigation files from 2016 to 2018.⁶⁰ DOJ also reviewed a sample of complaints that SPD informally resolved at the district station level, which SPD classified as "inquiries." These inquiries did not receive a formal investigation due to the "inquiry" designation. As part of the review, DOJ assessed whether SPD misclassified complaints warranting formal investigation as inquiries. Further, DOJ reviewed SPD's revised personnel-complaint-investigation and disciplinary policies as well as SPD's revised internal investigation manual.

A. FORMAL COMPLAINT AND INVESTIGATION FILE REVIEW

DOJ reviewed the investigation files of every complaint with a formal personnel misconduct investigation resolved between 2016 and 2018—a total of 43 complaint investigations. Contents of a formal investigative file varied slightly based on the context of the investigation and the seriousness of the allegations. Formal investigation files typically contained investigative chronologies, witness interview recordings and transcripts, photographs, video, incident reports, completed forms, disciplinary letters, and other evidence. To ensure consistency in the review process, DOJ employed a survey-like review tool to record the evidentiary components of each investigative file and the nature of the complaint, and to assess the quality of the file. Each file received a rating of good, poor, or standard based on standardized criteria measuring, among other things, the objectiveness and thoroughness of the investigation.

B. INQUIRY FILE REVIEW

DOJ reviewed a randomized sample of 144 "inquiries" from approximately 996 inquiries that SPD recorded between 2016 and 2018. Under SPD's former complaint intake and investigation system, an "inquiry" was 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,

⁶⁰ DOJ focused its review of SPD's personnel complaint investigation system because SPD had committed to revising its policies and internal affairs investigation model to eliminate its practice of informally investigating certain complaints at the division or district level as inquiries.

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.

DOJ reviewed database entries and summaries related to the inquiries, including complaint origination, complaint investigation summaries, disposition, and other entries related to the complaint. These entries were assessed to determine whether SPD misclassified complaints as inquiries when they should have received a formal investigation under SPD's own policies.

C. REVISED POLICY AND INTERNAL AFFAIRS MANUAL REVIEW

A number of recommendations in DOJ's Phase I Report address personnel complaint procedures, such as recommendations on the classification and the investigation of complaints. SPD has since revised and published its Internal Investigations Manual.

DOJ has not and does not plan to assess all of SPD's efforts to address the recommendations contained in the Phase I Report. However, because personnel complaint procedures are especially critical to building trust and police legitimacy within the community and because SPD revised its manual in response to DOJ's prior recommendations, DOJ reviewed the revised manual and offers recommendations for further improvement below.

DOJ generally found that SPD's formal investigation files reflect an investigative process that is, on balance, careful, thorough and well organized. Moreover, the review of SPD's inquiry entries revealed no pattern of misclassification. Still, DOJ concluded that multiple elements of SPD's investigation process warrant improvement. These observations are included in DOJ's recommendations below.

III. PROMISING PRACTICES

Overall, DOJ found SPD's investigations to be thorough and complete. For the 43 SPD investigation files reviewed, 35 percent received the top rating of "good", and 58 percent a rating of "standard". Only three of the 43 investigations (7%) received a "poor" rating. In 88 percent of cases, investigators appropriately pursued leads that were material and relevant to the initial complaint. And in 86 percent of cases, investigators adequately addressed factual inconsistencies that they encountered during an investigation. Witness interviews were generally thorough, open ended, and emblematic of a fact-finding process that was not influenced by bias or preconceived outcomes. While reviewers identified at least 15 cases (35%) in which investigators asked leading questions when interviewing witnesses, only a small minority of witness interviews employed leading questions that constrained or guided the responses of a witness to conform to the investigator's pre-formed view of the facts, and investigators largely asked relevant follow-up questions.

Likewise, the investigative files generally contained the relevant evidence, and DOJ found minimal signs that SPD ignored or disregarded critical evidence. Investigation files were complete, organized, and contained a chronology of the investigation. In almost all cases (93%), the personnel complaint disposition—the finding of sustained, not sustained, exonerated, and unfounded—was supported by the facts developed in the investigation.

IV. RECOMMENDATIONS FOR IMPROVEMENT

1. Recommendation: Every SPD misconduct investigation should include a comprehensive investigative summary.

A misconduct investigation should include a report that “provide[s] the decision-maker with enough information to arrive at a well-based finding.”⁶¹ This typically includes “a detailed, comprehensive summary” that, while “impartial [. . .] should also identify inconsistencies between statements and inconsistencies between statements and physical evidence.”⁶² DOJ recommends that SPD require its investigators to include an investigative summary that provides a full, fair, and thorough accounting of the investigation – and that this summary be included prominently within the investigative file as a primary or organizing resource.

SPD’s files often contain substantial information and evidence. However, unless an investigation resulted in a discipline recommendation (when a letter of intent to discipline is prepared that provides some summary of the investigation and findings), SPD’s investigative case files generally lacked any detailed narrative describing the nature of the allegations and the evidence gathered. Less than half of the investigative files reviewed contained a factual summary. Of the files that contained summaries, only 38 percent provided an adequately detailed accounts of the facts of the case. In the absence of such a summary report, it is not clear what statements are being credited or discredited and whether senior members of the command staff are routinely able to digest raw, documentary sources spread across hundreds of pages of material in order to arrive at a determination. Instead, the investigator should summarize the case and provide a conclusion for each allegation. The conclusion for each allegation should reflect the finding: exonerated, sustained, not sustained or unfounded.

2. Recommendation: SPD should clarify the process for classifying personnel complaints and assigning them for investigation.

In the Phase I Report, DOJ questioned SPD’s practice of classifying some personnel complaints as “inquiries” and designating them for informal review and resolution at the watch level. SPD previously classified complaints as inquiries when the watch level supervisor determined that the complaining party: (1) was satisfied by the initial response, (2) was only requesting clarification regarding a policy or procedure, (3) withdrew the complaint, refused to cooperate, or became unavailable, or (4) made an allegation that lacked any arguable basis or merit.

⁶¹ Off. of Community Oriented Policing Services, U.S. Dept. of Justice, Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice (2007) p. 36.

⁶² *Id.* at p. 37.

DOJ specifically expressed concern about SPD’s “inquiry” classification, informal review, and resolution of such inquiries because they did not trigger the same tracking and documentation requirements as complaints that were formally investigated. Under this inquiry system, it is possible that serious complaints against officers could be misjudged by watch supervisors as “lacking merit,” resolved at the watch level, and never reviewed or tracked by internal affairs or subject to any oversight or quality control.

SPD’s revised Internal Investigations Manual, 220.01 (RM 220.01) has eliminated the “supervisory inquiry” classification.⁶³ It instead instructs that all personnel complaints be investigated. The manual, however, distinguishes the types of investigations by whether they will be conducted by Internal Affairs or at the division level. If a complaint may result in non-disciplinary action, either Internal Affairs or the division can investigate it. Complaints that could result in disciplinary action are, by contrast, assigned only to the Internal Affairs investigators for investigation and disposition. Disciplinary actions include letters of reprimand, suspension, withholding in-grade salary increase, in-grade salary reduction, demotion, and termination. Non-disciplinary actions include verbal and documented counseling and documented training. Under RM 220.01, an SPD employee’s division captain, manager, or designee—not Internal Affairs—is responsible for classifying the type of investigation a personnel complaint receives.⁶⁴

DOJ has several concerns with SPD’s revised personnel complaint investigation system. To begin, SPD’s revised system retains a two-tiered investigation system, yet provides insufficient guidance for determining whether a particular complaint should be assigned to the division or to Internal Affairs for investigation. While RM 220.01 instructs that a “preliminary investigation” shall be performed “to determine the merit of a personnel complaint and identify the nature of the allegation of misconduct,” it is unclear whether the “preliminary investigation” is the designated deliberative process for determining whether a complaint will receive a division or Internal Affairs investigation.⁶⁵

DOJ has two concerns with SPD’s apparent intent to use the preliminary investigation process to predetermine the type of investigation that a personnel complaint will receive. First, the preliminary investigation process requires an initial review determine the merit of the complaint before it is assigned for a full investigation. This could create the perception that investigators will prejudge the merit of certain complaints based on the source rather than subjecting all complaints that portray a prima facie offense to the same investigative rigor.

⁶³ See generally, Sacramento Police Dept., Internal Investigations Manual, RM 220.01 (Aug. 1, 2019) (hereafter Internal Investigations Manual, RM 220.01). Available at <https://www.cityofsacramento.org/-/media/Corporate/Files/Police/Transparency/RMs/RM-22001-Internal-Investigations-Manual-8-1-19.pdf?la=en>.

⁶⁴ The revised manual currently delegates authority to classify the complaint and identify the type of investigation it will receive to the subject employee’s Division Captain/Manager or designee. (See *id.* at p. 5.)

⁶⁵ Internal Investigations Manual, RM 220.01, *supra*, note 63, at p. 4.

DOJ's Phase II review revealed that before SPD changed its policies to eliminate the inquiry category it classified the majority of the external complaints it received from the public as "inquiries." If this pattern continues with the preliminary investigation process, it is likely that most external complaints, including those that allege serious misconduct, could be referred for division-level investigation rather than Internal Affairs investigation. Serious allegations should receive equal treatment unless undisputed evidence shows that the complaint is demonstrably impossible or frivolous.

Second, the lack of a disciplinary matrix or any predictable guideline for determining whether a particular complaint, if sustained, would result in discipline further obscures the process for determining whether a complaint should be investigated by Internal Affairs. Thus, to ensure consistency and fairness in its complaint investigation process, SPD must modify its policy to clarify the circumstances under which a policy violation may "result in disciplinary action."

SPD should clarify its policies and training to ensure that the investigative assignment process does not circumvent or frustrate the full investigation of complaints. Generally, "[a] complete investigation should take place where the allegations, if true, would likely result in formal discipline."⁶⁶ Unless a complaint qualifies as one of "[a] small number" that "allege facts that defy science and reason [. . .] and should be closed with a finding that the complainant's claim was impossible to investigate because the allegations were physically, logically, or technically impossible under any reasonable construal," all complaints alleging misconduct should receive a full investigation.⁶⁷

SPD should further refine its complaint investigation classification policy to require that all complaints of serious misconduct—including all force, discrimination, and misconduct allegations, which if proven true would result in serious discipline including termination—will be formally investigated by Internal Affairs.

SPD should also clearly define the classifications of allegations that may be investigated at the district level. For consideration, COPS has suggested that departments may assign the following categories of complaints to the district level for investigation: (1) allegations of discourtesy or rudeness, without any suggestion of discrimination against a particular group; (2) public complaints about traffic citations and enforcement; (3) minor infractions of agency regulations, preventable traffic collisions and minor performance issues; and (4) allegations of excessive or unreasonable minor uses of force not involving death, serious injury, or hospital admittance, or willful, intentional, reckless or knowing misconduct.⁶⁸ Further, complaints that are clearly frivolous from the face of the complaint (i.e. complaints about an impossibility), or do not

⁶⁶ Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice, *supra*, note 61, at p. 29.

⁶⁷ *Id.*

⁶⁸ *Id.* at p. 32. While DOJ acknowledges COPS's suggestions, DOJ believes that each instance of use of force and an officer's history of use of force should be factored into whether allegations regarding minor uses of force should be elevated above district level investigation.

proffer a complaint about officer behavior (i.e. even if the complaint is proven true, it would not result in disciplinary action against an officer), can be assigned for investigation at the district level and monitored by Internal Affairs.

3. Recommendation: SPD should ensure that Internal Affairs coordinates, tracks, and oversees all investigations to ensure investigation quality regardless of the source of the complaint.

SPD's Internal Affairs Division should function as the hub for receiving, investigating, and coordinating the administrative review of misconduct complaints. "Any decision not to proceed to a complete investigation should be made by the commander of Internal Affairs with a written explanation."⁶⁹

Having Internal Affairs serve as the central coordinating body with respect to all misconduct complaints does not completely release the appropriate chain of command at the District level from being responsible for conducting certain investigations. Internal Affairs may determine that some cases are better suited for the chain of command to address, but still oversee and coordinate those investigations to ensure quality and consistency. Nevertheless, unlike what SPD has historically done, all viable complaints should be investigated, and all such investigations should be centrally tracked and administered by Internal Affairs.

4. Recommendation: SPD policy should clarify the difference between internal and external complaints.

DOJ's review of formal complaint investigation files revealed what appears to be confusion between properly categorizing a complaint as "internal" or "external." General Order 220.01 instructs that "external" complaints originate from any member of the public and internal complaints are complaints reported by federal state or local agency employees acting within the scope of their employment, agency, or official position. Still, SPD should specify that in the event that a member of the public makes a complaint to a member of SPD, and the employee then forwards that information to Internal Affairs, the complaint should be classified as "external" because the individual who identified the issue or made the originating allegations is a member of the public, not an SPD employee.

5. Recommendation: SPD and its supervisors should meaningfully evaluate the classification of personnel misconduct to ensure accuracy and integrity.

SPD policy lists 17 categories of officer misconduct. In practice, however, SPD routinely relies on a limited set of vaguely worded categories of misconduct such as "conduct unbecoming" and "neglect of duty" to encompass a broad range of officer misconduct. Specifically, more than half

⁶⁹ *Id.*

(58%) of the personnel investigation files adjudicated “conduct unbecoming charges” and 44 percent of the personnel investigation files adjudicated “neglect of duty” charges.

This lack of specificity is problematic because it can lead to inconsistent disciplinary outcomes and, if misused, can undermine the integrity of the disciplinary system. For instance, using vague categories such as “conduct unbecoming” to classify a widely diverse range of behavior could result in artificially classifying various behaviors as equivalent when there are meaningful qualitative differences. Likewise, as DOJ’s policing experts have observed in other jurisdictions, some police departments misuse categories like “conduct unbecoming” to avoid a classification seen as more significant or serious, such as “dishonesty,” which carries *Brady*⁷⁰ implications for officers. Such conduct cannot only undermine the integrity of SPD but also pervert the course of justice if it results in potentially relevant police files being withheld from a criminal defendant.

Using more specific misconduct classifications will also improve the clarity of disciplinary records by allowing supervisors to efficiently access and rely on officers’ disciplinary history when evaluating an officer for promotion or discipline. If the complaint classifications do not tell SPD something meaningful about the nature of the underlying matter, the evaluation of an officer’s prior performance history will have less value to the agency.

6. Recommendation: SPD should train its investigators to thoroughly investigate all evidence/indications of personnel misconduct that arise during an investigation even if it is not included in the original complaint.

In approximately 12 percent of the reviewed cases, investigators appeared to limit the scope of their investigations to the specific allegations outlined in the complaints. This has the effect of potentially ignoring other deficient performance issues. For instance, one investigation focused on the original allegations of rudeness, but the investigation raised additional issues about the legality of a vehicle search. The investigator failed to identify or pursue the issue of the search.

SPD should ensure that where other problematic performance or misconduct may have been reasonably detected during the investigator’s work, such potential misconduct is also investigated, even if it was not specifically alleged, detailed, or classified in the originating complaint.

⁷⁰ Under *Brady v. Maryland* (1963) 373 U.S. 83, and other decisions based on the reasoning in *Brady*, prosecutors have an affirmative obligation to turn over all evidence that might exonerate the defendant to the defense. Because sustained findings of dishonesty against an officer are highly damaging to an officer’s credibility as a prosecution witness and must be disclosed under *Brady*, sustained allegations of dishonesty against an officer will often result in an officer’s termination.

7. Recommendation: SPD should train its investigators to avoid using leading questions when interviewing personnel and other witnesses.

In approximately 35 percent of cases, reviewers observed that investigators used leading questions in the course of the interview. This type of questioning was primarily observed in the form of investigators assuming facts not previously established, at least within the context of that witness interview. In extremely rare, but more egregious cases, reviewers identified instances in which investigators used leading questions to steer the witness to provide an answer that was consistent with the investigator's theory of the case.

Because “[q]uestions asked during the interview should be open-ended and non-leading,” SPD should ensure that investigators receive ongoing training in complex investigations and interview techniques.⁷¹

8. Recommendation: SPD should require that its investigators conduct in-person, videotaped interviews of all witnesses in all investigations.

Currently, many of the in-person witness interviews that SPD conducts are captured through audio recordings; however, this same protocol is not consistently applied for questioning its own personnel. Rather, SPD employs written interrogatories to question its own personnel involved in cases regarding complaints of lesser severity. While using written records may be an adequate solution in some cases, there are compelling reasons for SPD to adopt video recording as routine for all witness interviews. Indeed, the relatively low cost of video recording tools – including mobile devices and body-worn camera units – is rapidly leading agencies to adopt capturing all interviews on video as a best practice.

9. Recommendation: SPD should ensure consistency with respect to timelines for completing investigations.

In the review, DOJ found that it took SPD nearly a year to complete many of the investigations. DOJ's understanding is that under SPD's internal policies and timelines, SPD has up to one year to act on an investigation (i.e., impose discipline), but should act well within that timeframe. Here, 98 percent of all investigations were completed within the one-year timeframe allowed by policy and law. But lengthy investigations, unless justified by the particular circumstances of a case, can diminish the impact that personnel discipline can have on the officer and his or her peers and adversely affect a department's legitimacy in the community.⁷² Therefore, it is important for SPD to adopt policies that clearly articulate and enforce expectations for timelines.

⁷¹ Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice, *supra*, note 61, at p. 36.

⁷² Stephens, Nat. Inst. of J., Police Discipline: A Case for Change (June 2011) p. 7 (hereafter Stephens, Police Discipline). Available at: <https://www.ncjrs.gov/pdffiles1/nij/234052.pdf>.

Inevitably, some cases will pose particular challenges or prove especially complex. For cases where Internal Affairs investigators do not believe that they can meet the applicable timeline for completion, a formal process should be established for seeking a written request for a timeline extension, with supervisors providing written approval or rejection of the extension request.

10. Recommendation: SPD should track consistency across chains of command and across cases with respect to imposed discipline.

With respect to determining whether any departmental action is necessary because of a misconduct investigation, SPD should ensure transparency and consistency. In particular, SPD should consider establishing a disciplinary matrix or other similar guidance that sets forth expected ranges of discipline or remedial action for specific classes of offenses or allegation types. During on-site interviews, DOJ learned that SPD does not use any such disciplinary guidance. General Order 200.05, “Disciplinary Actions,” does not specifically reference the potential discipline ranges for particular offenses. Instead, it sets forth very general processes for how discipline is imposed.

11. Recommendation: If an officer resigns in lieu of termination, SPD should complete the investigation and refer the outcome, as applicable, to the state certification board.

When an officer resigns before the conclusion of a misconduct investigation, the investigation should still be completed. If the findings are consistent with discipline being imposed, SPD should continue to maintain its records of the investigation in order to comply with valid Public Records Act requests. DOJ recommends that such records be made available to any other law enforcement agency requesting them for a background check, in compliance with relevant employment and privacy laws, to ensure that other agencies do not unwittingly hire officers with serious, sustained allegations against them.

12. Recommendation: SPD should periodically conduct compliance audits to determine whether its personnel complaint policy is being followed.

SPD’s personnel complaint intake and investigation system is only effective if SPD officers follow the policies. Compliance audits can be designed to test whether officers are properly accepting, documenting, routing, and investigating personnel complaints. SPD should employ compliance audits to review the complaint database and ensure that the processing of all complaints meets these requirements.

DISCIPLINE

I. GENERAL OVERVIEW

A comprehensive, transparent, and fair disciplinary system is important to ensure that officers are aware of, and abide by, the many laws, policies, procedures, and rules governing the policing profession. It is equally important because a fair and transparent disciplinary system can demonstrate a police department's commitment to procedural justice and enhance its legitimacy within the surrounding community.

SPD resolves all disciplinary matters in accordance with the Civil Service Board Rules (CSBR), Departmental General Orders, Internal Investigations Manual (RM 220.01), and applicable labor agreements. Disciplinary action is subject to the provisions of the Charter of the City of Sacramento, the Civil Service Board Rules, applicable labor agreements, and, when necessary, the approval of the City Manager or designee.

SPD police officers and employees are subject to discipline if they violate: (1) their oaths by committing an offense in violation of the laws or statutes of the United States, the State of California, or the ordinances of the City of Sacramento; (2) any provisions of the General Orders of SPD; or (3) any lawful order of a superior.

SPD's discipline policy categorizes actionable misconduct under multiple categories ranging from general to specific offenses. For example, the offense of "conduct unbecoming of an employee" encompasses "any behavior that is malicious, criminal, brings discredit upon the department, or fails to follow ordinary and reasonable rules of good conduct while on or off duty from specific offenses, including false arrest, improper search and seizure, and discrimination." (General Order 220.01.) In contrast, other offenses target specific misconduct, such as "false arrest," "improper search and seizure," and "discrimination."

If an allegation of misconduct is substantiated after an investigation, SPD may impose informal or formal disciplinary action. Informal disciplinary action includes corrective action through written counseling and/or retraining. Formal disciplinary action includes written reprimands, suspension, demotion, withholding of a salary increase, salary reduction, and termination. The Chief of Police must approve all formal disciplinary action, including letters of reprimand. Suspensions of 40 hours or more also require approval by the Labor Relations Manager. The City Manager must approve the most severe sanction of employment termination.

II. OVERVIEW OF ASSESSMENT AND REVIEW PROCESS

The review focused on SPD's internal disciplinary system. To assess this system, DOJ relied on its review of SPD Internal Affairs investigation files described and addressed in the *Personnel Complaints and Investigations* section of this report. DOJ also reviewed the following policies and procedures: SPD Discipline Policy (GO 220.5), the Internal Investigations Manual (RM

220.01), and City of Sacramento Civil Service Board Rules, Labor Agreement Covering Employees in the Police Department Unit, and Discipline Procedures and Review Standards.

III. RECOMMENDATIONS FOR IMPROVEMENT

While SPD has policies defining its disciplinary system from intake through investigation, it lacks formal, written guidelines that define: (1) how it assigns penalties or remedial action when a personnel misconduct allegation is sustained against an officer; and (2) under what circumstances and how disciplinary alternatives, such as education-based discipline, can be employed to correct misconduct in lieu of punishment.

Adopting clear guidelines that set the parameters for how SPD will address sustained personnel misconduct will enable SPD to ensure: (1) that SPD employees and the community understand how disciplinary decisions are made; (2) that discipline is consistently and fairly applied; and (3) that supervisors and managers have adequate guidance and information to make fair and effective disciplinary decisions.⁷³

- 1. Recommendation: To ensure the fairness and equity of discipline imposed across cases, incidents, and officers, and to promote predictability and transparency for officers and the public, SPD should codify and standardize its disciplinary recommendation process to ensure all recommended discipline is commensurate with the seriousness of the offense and is applied consistently.**

At the time of this review, DOJ found that when SPD sustains charges against an officer relating to policy violations, the assigned penalty or remedial action is based on the good-faith efforts of one SPD staff member who, aided with a rudimentary database, attempts to recall what discipline was assigned in similarly- situated cases in the past. Even given diligent efforts, this system provides little predictability or transparency to officers or members of the public, and is likely to result in inconsistent discipline.

To avoid such outcomes, DOJ recommends that SPD adopt and codify a standardized system for applying discipline consistently and transparently. The use of a “discipline matrix” has emerged as a best practice in police agencies:⁷⁴

A discipline matrix is a formal schedule for disciplinary actions, specifying both the presumptive action to be taken for each type of misconduct and any adjustment to be made based on an officer’s previous disciplinary record.

⁷³ Stephens, *Police Discipline*, *supra* note 72, at pp. 13-15.

⁷⁴ Shane, *Police Employee Disciplinary Matrix an Emerging Concept* (Mar. 2012) vol. 15, No. 1 Police Quarterly 62.

The primary purpose of a discipline matrix is to achieve consistency in discipline in order to eliminate disparities and ensure that officers who have been found to have committed similar forms of misconduct will receive similar discipline.⁷⁵

Ultimately, “[c]reating such a matrix forces the agency to choose—in advance—the most appropriate penalty for common forms of misconduct” while “dramatically increas[ing] the likelihood that individuals with similar backgrounds committing the same act of delinquency will receive equal punishment.”⁷⁶

A 2015 study that randomly surveyed departments of 100 or more officers in the United States found that some 37 percent of responding agencies used, or planned to use, discipline matrices.⁷⁷ However, among large, urban police departments, there appears to be a higher rate of adoption of discipline matrices. Cities and Counties that currently use such a matrix include: Cleveland, Ohio; Denver, Colorado; Madison and Milwaukee, Wisconsin; Tucson, Arizona; and in California, Oakland, San Diego, and Los Angeles County.

“[T]he codification and implementation of a discipline matrix can be collaboratively designed by management in partnership with line employees.”⁷⁸ SPD’s implementation should consult with police officers, their unions, and other employee organizations to ensure greater collaboration and buy-in.

2. Recommendation: SPD should clearly delineate the parameters and protocols for employing disciplinary alternatives, such as “education-based discipline” to ensure that the alternative process utilized effectively corrects the behavior leading to disciplinary action.

“Education-based discipline” (EBD) is a process designed to change officer behavior via education rather than punishment. In such a process, the officer is permitted to complete a tailored remedial plan designed to address the misconduct that would ordinarily incur discipline. SPD utilizes EBD for at least some offenses, but it lacks guidelines that clearly define under what circumstances and how EBD can be used to correct the conduct leading to disciplinary action in the first place.

The logic of such discipline is that remedial action, rather than merely imposing a suspension or other punitive action, addresses behavioral change.⁷⁹ It is important, however, to ensure that an

⁷⁵ Stephens, Police Discipline, *supra*, note 72, at p. 10 (quoting Walker, The Discipline Matrix: An Effective Police Accountability Tool? (2004)).

⁷⁶ Johnson and Nolan, *Making Discipline Stick Beyond Arbitrator Review* (Dec. 9, 2019) FBI: Law Enforcement Bulletin. Available at <https://leb.fbi.gov/articles/featured-articles/making-discipline-stick-beyond-arbitrator-review>.

⁷⁷ Harris et al., *The Prevalence and Content of Police Discipline Matrices* (2015) 38 Policing: An Internat. J. 788.

⁷⁸ Voglesang-Coombs, *The Political Ethics of Public Service* (2016) p. 294.

⁷⁹ Stephens, Bur. of J. Assistance Executive Sess. on Police Leadership, Some Thoughts on Improving Police Discipline (2019) p. 3. Available at <http://bjaleader.org/pdfs/040ImpPoliceDiscipline.pdf>.

EBD program is utilized in narrowly defined and appropriate circumstances. For example, the Los Angeles County Sheriff's Department was an early proponent of an EBD approach that permitted officers to address imposed discipline through training and disciplinary activities other than suspension. However, a September 2013 analysis of the Los Angeles County Sheriff's program found that, while that particular program was "well-intentioned, in practice it [was] being used indiscriminately and [was] overbroad,"⁸⁰ emphasizing the importance of ensuring a well calibrated system of suspension alternatives.

Another EBD example can be found in the Metropolitan Police Department in Washington, D.C., which implemented a program that permitted discipline to be held in abeyance for twelve months, conditioned on the officer not engaging in misconduct during that period. This type of program also focuses the remedial process on future behavioral change rather than simply assuming that "days off" will lead to improved performance going forward.

SPD should consider using a variety of tools, trainings, counseling, and remediation measures to address problematic performance. However, any system for allowing officers to avoid unpaid suspension days by satisfying other requirements needs to be rigorously documented and tracked. First, the types of cases that are suitable for alternatives to suspension must be clearly articulated. It is likely that remedial action other than suspension is only appropriate for particular classes of misconduct – and, in any event, is unlikely to be appropriate for officers who might typically face significant suspensions, demotion, dismissal, or termination.⁸¹ Second, SPD must ensure that suspension alternatives are reasonably related and responsive to the nature of the underlying offense or policy violation. For instance, attending a training on strategic communication skills may not be directly responsive, or promote the type of behavioral change needed for an officer with attendance issues.

⁸⁰ See generally Police Assessment Resource Center, 38th Semiannual Report of Special Counsel: Los Angeles County Sheriff's Department (Sept. 2013). Available at <https://www.clearinghouse.net/chDocs/public/PN-CA-0001-0035.pdf>.

⁸¹ Hess and Hess Orthmann, *Management and Supervision in Law Enforcement* (2011) p. 345.

EARLY INTERVENTION PROGRAM

I. GENERAL OVERVIEW

An effective Early Intervention Program (EIP) has long been considered an essential component of personnel management for police departments.⁸² Generally, EIPs identify officers with potentially problematic performance trends so that supervisors can provide non-disciplinary interventions, aimed at enhancing future performance, changing behavior, and improving the safety and effectiveness of police services.

Specifically, an EIP flags officers in a database system if certain performance indicators occur, such as citizen complaints, use of force incidents, pursuits, or other circumstances. Departments set a threshold for individual indicators and/or a combination of the indicators for a set time period. When a threshold is hit, supervisors are alerted that an officer may require non-disciplinary intervention. Interventions tend to be a combination of counseling, education, and other services. After the intervention, the department monitors the officer's performance for any recurrence of problematic behavior.

At the time of the Phase I Report, SPD acknowledged that its EIP was not as effective as it should be. SPD's EIP only triggered alerts if, within a twelve-month period, an officer was involved in three or more separate citizen complaints of a similar nature, or canine violations, vehicle pursuits, or use of force incidents that were found to violate SPD's policy. These extremely limited indicators meant that, in practice, the EIP would not be triggered in most instances, thus excluding many officers who could benefit from non-disciplinary counseling. Accordingly, the Phase I Report recommended that SPD substantially enhance its EIP.

Since the Phase I Report, SPD has taken steps to improve its EIP. On October 11, 2019, SPD amended General Order 570.06, which provides the general framework for the EIP. The General Order outlines several indicators of officer performance that, if combined in certain circumstances and within a certain timeframe, will trigger the EIP as follows: (1) internal affairs investigations; (2) division investigations; (3) requests from the public to speak to the officer's supervisor; (4) vehicle pursuits; (5) foot pursuits; (6) all citizen complaints; (7) incidents of use of force; (8) in custody death; (9) officer involved shootings; (10) vehicle collisions; and (11) canine violations.

While General Order 570.06 does not specify how many or what combination of these indicators will create an electronic alert (EIP alert), SPD has indicated that the following three

⁸² U.S. Civil Rights Com., *Who Is Guarding the Guardians?* (1989) p. 80; Internat. Assn. of Chiefs of Police (hereafter IACP) *Building Integrity and Reducing Drug Corruption in Police Departments* (Sept. 1989) p. 80 (endorsing the broad use of EIPs as "a proactive management tool useful for identifying a wide range of problems, not just a system to focus on problem officers."); see also Consent Decree, *United States v. City of Pittsburgh* (W.D. Pa. 1997) No. 97-0354 (requiring the Pittsburgh Police Department to adopt an EIP).

circumstances will prompt an EIP alert: (1) there are three of the same incidents/indicators within one year; (2) there are two distinct citizen complaints against an officer in one year; and (3) an officer is involved in six triggering events (as described above) in the span of one year.

Once the EIP is triggered, the EIP coordinator forwards the EIP alert to the captain overseeing the officer. The captain (or a designee) has 30 days to review the incidents that triggered the EIP alert and to determine if the employee qualifies for the EIP. In addition to considering the incidents that caused the notification, once the EIP is triggered, the captain can consider other associated factors, including sick leave, traumatizing incidents, overtime usage, and statistics regarding traffic stops, to determine whether to place the officer in EIP. If the captain determines that the officer should not undergo an EIP intervention, the captain must send the alert back to the EIP coordinator with an explanation of why no action was necessary.

If the captain determines that an officer would benefit from the EIP, the captain sends the EIP Alert; any supporting documentation; and recommendations for appropriate action, which may include peer support, Employment Assistance Program (EAP) benefits, counseling, and retraining, to the chief for approval. Upon approval, the employee's captain is responsible for implementing the recommended action and monitoring the employee's progress. Division command and administrative staff are responsible for retaining the appropriate documentation in the employee's watch file for twelve months.

The following section assesses the substantial changes to SPD's EIP and offers suggestions for making the program more robust, as well as increasing transparency and ensuring its effectiveness.

II. OVERVIEW OF ASSESSMENT AND REVIEW PROCESS

In assessing SPD's EIP, DOJ reviewed various documents, memoranda, and processes including relevant policies and instructions. Specifically, DOJ reviewed the updated General Order 570.06, which sets forth the general framework for SPD's EIP. DOJ also reviewed SPD's EIP instructions for captains and deputy chiefs. Additionally, DOJ attended in-person meetings with the EIP coordinators and support staff to discuss SPD's progress in implementing the EIP.

In addition to analyzing SPD's policies and procedures, DOJ considered best practices in place at the New Orleans, Baltimore, and Seattle Police Departments.⁸³ These Departments revamped their programs pursuant to U.S. Department of Justice consent decrees. DOJ also considered the

⁸³ Baltimore Police Dept., Policy 1707 Early Intervention System (Draft, May 15, 2018). Available at <https://tinyurl.com/BaltimoreEIP>; New Orleans Police Dept., New Orleans Police Department Operations Manual (Nov. 15, 2019) Insight: Early Intervention System (hereafter New Orleans Police Department Operations Manual). Available at <https://tinyurl.com/NOLAeis>; Best, Seattle Police Dept., Seattle Police Department Manual (Apr. 1, 2020) 3.070 - Early Intervention System (hereafter Seattle Police Department Manual). Available at <https://tinyurl.com/SeattleEIP>.

San Francisco Police Department's program, as SPD had expressed an interest in the way that department is running its EIP.

III. PROMISING PRACTICES

With the updated General Order 570.06, SPD has taken promising steps to revamp its EIP and make it more robust and effective. The updated General Order provides a revised set of indicators and situations that would trigger an EIP alert and requires that these indicators be reviewed annually. SPD's stated goal is to not limit these indicators so much that no employee is placed in the EIP, but not have them be so broad such that every employee is placed in the EIP. This is a substantial improvement from SPD's prior policy, in which only extremely limited circumstances triggered the EIP.

Similar to the San Francisco Police Department's EIP approach,⁸⁴ under SPD's new program, once an EIP alert is created, supervisors can consider several additional factors when determining whether intervention is appropriate. Allowing for the consideration of additional factors will provide more context for decision makers and allow them to better strategize which services to provide the employee.

Additionally, the General Order 570.06 sets forth greater detail about the mechanics of the EIP process itself. Unlike SPD's past order, the revamped program specifies the role of an EIP coordinator, provides for a time frame of 30 days for a captain to determine whether the employee qualifies for the EIP, and defines the process that supervisors should follow when they determine that an employee should not be in the EIP. As noted below, however, SPD should continue to make the General Order 570.06 more process-specific.

Finally, SPD's materials demonstrate that the department does not consider the EIP to be a disciplinary tool. This is key because an EIP works best when it is used as a proactive tool for non-disciplinary management.⁸⁵ General Order 570.06 specifies that EIP is a "confidential, non-disciplinary intervention program to assist [SPD] employees." It further notes that specific details of Peer Support or EAP involvement, which are possible EIP counseling actions, will not be included in the officers' watch files. The training documents indicate that SPD is teaching captains and chiefs to balance the potential for discipline with a focus on wellness.

Overall, SPD's updated policies and trainings illustrate SPD's commitment to using this important tool as effectively as possible.

⁸⁴ San Francisco Police Dept., General Order 3.19: Early Intervention System (Feb. 21, 2007). Available at <https://tinyurl.com/SFepi>.

⁸⁵ See IACP, *supra*, note 82.

IV. RECOMMENDATIONS FOR IMPROVEMENT

SPD's revamped EIP is still in its very early stages. As SPD implements its new policies, it should take additional steps to ensure that the EIP is consistently, fairly, and effectively applied. In doing so, SPD should ensure that the EIP is focused on officer wellness while also clearly communicating to officers the potential impact the EIP could have on their current or future employment. Finally, while ensuring officer-data is secure and private, SPD should maintain transparency with the public about EIP-related trends and data. The following recommendations are intended to help SPD meet these goals.

1. Recommendation: SPD should define and describe the EIP more specifically and thoroughly in General Order 570.06.

While the updated General Order 570.06 greatly improves upon SPD's prior policy, there are still areas where the EIP process should be more expressly defined or described. There are a few aspects of the program in particular that the General Order fails to address: (1) who works with an officer to improve his or her performance, (2) the format of the review session, and (3) the timeline for counseling and intervention. To SPD's credit, the training documents for captains provide more information regarding the process, and suggest that the captain may delegate the responsibility of working with the officer to either a sergeant or lieutenant. Nevertheless, the responsibilities and the timeline should be more specific and concrete in the General Order, especially for the line officers who may not have access to the supervisors' instructions.

Accordingly, DOJ recommends that SPD update its General Order 570.06 to:

- Specify that the officer's first-line supervisor is responsible for working with the officer to improve his or her performance.
- Identify the information to be reviewed and detail the intervention options available to help correct an officer's behavior.
- Describe the format for a specific, written performance improvement plan including interventions to be taken, time frame to complete the interventions, and the possible outcomes of the interventions.
- Specify who determines if an officer successfully completes a performance improvement plan. The consequences for failing to complete a performance improvement plan should also be clear.
- Specify precisely how an EIP alert is sent.

2. Recommendation: SPD should allow a supervisor to place an officer directly into the EIP.

SPD has made significant improvements in expanding its EIP. By recalibrating the performance thresholds that trigger the EIP, SPD has ensured that more officers can benefit from the program. However, the EIP does not contain a mechanism for supervisors to place employees directly into the EIP when the supervisor believes there is a problematic performance pattern and that non-

disciplinary intervention could be useful. A supervisor should not be required to wait for a triggering event that meets a certain threshold before being able to help the officer. Supervisors should be empowered to affirmatively provide such assistance, rather than passively reacting to indicators. Therefore, subject to proper review, SPD should allow a supervisor to place an officer directly into the EIP program.

3. Recommendation: SPD should consider integrating additional factors into the EIP.

SPD recently added a number of triggers that prompt an EIP alert. In its training materials, SPD has also set forth some additional factors for supervisors to consider when determining whether an employee should be placed in the EIP. While those factors alone will not trigger an EIP alert, they can provide further context as administrators decide the best course of action. SPD should continue analyzing whether other indicators or associated factors should be incorporated. For example, SPD could consider adding associated positive factors, such as training records, secondary employment records, and awards and commendations. Such methods have already been successfully implemented in other departments, like the New Orleans Police Department, which already utilizes these positive associated factors in its EIP.⁸⁶ This information should be reviewed during the EIP process so that an assessment as to whether intervention may be useful can fairly take account of a more comprehensive set of performance indicators.

4. Recommendation: SPD should determine if the use of ratios and/or peer groups can improve the accuracy of its EIP alerts.

It appears that SPD uses fixed thresholds to trigger the EIP. Fixed thresholds can fail to account for the fact that different employment circumstances can lead to different performance results. For instance, some shifts or assignments will involve comparatively more or less interactions that could lead to force. Because of these inherent discrepancies, many departments across the country, such as the New Orleans Police Department, have begun to explore using ratios and peer group comparisons to determine an officer's risk and alert status.⁸⁷ This is a more sophisticated way of assessing risk, and many argue a more accurate way to identify high risk officers. Ratios, such as the number of use of force incidents per the number of arrests, control for the level of officers' activity. Peer group comparisons consider the environment and assignment of the officer. For example, using this system an officer working the first shift is compared only to other officers working the first shift. Similarly, officers in a special assignment, like gangs, are only compared to other officers assigned to gangs, drugs, or tactical units.

⁸⁶ New Orleans Police Department Operations Manual, *supra*, note 83, at pp. 2-3.

⁸⁷ *Id.* at p. 12.

5. Recommendation: SPD should take steps to ensure that the EIP contains accurate data and is being used in a standard and effective way.

Under SPD's program, the EIP coordinator annually conducts a review of the indicators that trigger EIP alerts to ensure that the program is working effectively. Although this is good progress, SPD should take additional measures to ensure consistency and uniformity in implementing the new program. The Seattle and New Orleans Police Departments provide good examples. Both Departments established an executive committee responsible for reviewing the methodology and outputs of threshold measures, the use and effectiveness of the EIP, developing referral resources, and addressing requested corrections to EIP data.⁸⁸ Seattle's committee is also responsible for determining if individual performance improvement plans are adequate.⁸⁹

SPD should consider adopting a similar approach to that of Seattle and New Orleans. Specifically, an executive committee should be established to ensure department-wide consistency and uniformity in implementing the EIP. The committee should also be charged with reviewing data elements in the EIP and thresholds that trigger intervention. This group can also review the range of intervention options to determine their effectiveness, and to help obtain additional resources.

Additionally, SPD should establish a mechanism to ensure that the EIP is properly activated and consistently applied, and to monitor its EIP's effectiveness and implementation. The development of SPD's EIP implementation and officer performance improvement plans should not be left to individual captains without sufficient guidance and instruction.

6. Recommendation: SPD should connect the EIP with its officer wellness program.

In both the General Order and instructions to supervisors, SPD explicitly states that the EIP is not a disciplinary program. SPD has acknowledged this crucial element of the EIP program in its instructions to deputy chiefs about the EIP, stating "[t]he goal of this program is to focus on officer wellness and [it] will be more successful if it is perceived that way by the officers." As explained above, this is an encouraging practice, as EIPs work best as non-disciplinary personnel management tools. However, as the General Order and the training documents note, simply because an employee is in the EIP does not mean that he or she cannot be disciplined. And, the fact remains that employees placed in the EIP will receive some type of counseling that, while not technically discipline, may feel like discipline.

Thus, SPD should consider anchoring the EIP to the officer wellness program. Indeed, an EIP's primary goal is to proactively address the underlying causes of an officer's emerging performance problem and provide non-disciplinary guidance and assistance to prevent significant issues from arising. Such performance problems can often be caused by job and/or family stress,

⁸⁸ Seattle Police Department Manual, *supra*, note 83; New Orleans Police Department Operations Manual, *supra*, note 83, at p. 8.

⁸⁹ Seattle Police Department Manual, *supra*, note 83.

substance abuse, or even poor physical health. In keeping with the non-disciplinary goal of the program, and to address the diverse set of underlying problems that could cause performance issues, SPD should expand its range of intervention options to include closer supervision and training, such as supervisor ride-a-longs and coaching, as well as options to modify duties, re-assign officers, or transfer officers. With better communication and more counseling options, SPD can ensure that officers perceive EIP as integral to officer wellness.

7. Recommendation: SPD should permit officers to review their EIP files and raise issues with the accuracy of the EIP data.

The current EIP guidelines suggest that SPD's EIP data will be part of the officers' watch files, but it is unclear whether these files will be potentially shared with other government entities where officers may seek employment in the future. This should be clarified, so that all of the parties involved understand the potential impact of the EIP on future employment. To that end, SPD should allow officers to review the data used in their EIP files and raise accuracy issues. SPD should establish a review process similar to that of the Seattle Police Department that provides a function for officers to raise accuracy issues regarding their EIP data.⁹⁰ Clarifying the impact of the EIP while providing a mechanism to address incorrect information will foster transparency within the organization.

8. Recommendation: SPD should annually compile a comprehensive statistical report on its EIP.

Other than the General Order, SPD does not currently make information about its EIP available to the public. DOJ recommends SPD consider publicly sharing general or aggregate data (excluding personal information) about the program. The San Francisco Police Department, for example, already publishes quarterly statistics about its EIP on their website.⁹¹ The sharing of this data provides an opportunity for SPD to foster transparency within its own organization and with the public by showing: (1) how frequently EIP is being used; (2) whether, and the extent to which, EIP referrals are resulting in corrective action; and (3) the resources SPD is allocating to the program.

⁹⁰ Seattle Police Department Manual, *supra*, note 83.

⁹¹ *Early Intervention System Reports*, San Francisco Police Dept. Available at <https://tinyurl.com/SFeipreports> (as of June 22, 2020).

RECRUITMENT, HIRING, AND RETENTION

I. GENERAL OVERVIEW

As part of the Phase II review, DOJ examined SPD's officer hiring and recruitment practices because, used strategically, hiring and recruitment can be integral to reducing incidents of use of force. Hiring and recruitment are not just important components of creating a cohesive and successful police department. They are the first and most critical steps to ensuring that a department is staffed with officers that reflect the values of the department and the communities it serves, and have the appropriate qualifications and temperament for the job.

Hiring and recruitment processes are integral to reducing force because they are the first opportunity a department has to make a positive impression and convey the department's core values. This in turn allows the department to attract and hire officers who are the most capable of executing their jobs competently without unnecessarily resorting to force. For instance, effective background checks help a department ensure that it is hiring candidates who are intellectually and emotionally equipped, mature, and capable of handling highly stressful situations and resolving conflicts without resorting to unnecessary violence. Recruiting is an opportunity for departments to attract qualified candidates who are motivated to join law enforcement out of a desire to serve and protect the community.

Hiring from a diverse pool of candidates may also have a positive cumulative effect on the frequency and nature of force incidents. A diverse workforce has the potential to mitigate the influence of implicit bias on policing decisions such as enforcement stops and force. And, by reflecting the demographics of the community a department serves, a diverse workforce may bolster a department's legitimacy, and thus, reduce tensions and conflict between the department and the community. Some research also suggests that increasing gender diversity in a police agency results in decreases in uses of force.⁹²

Fortunately, SPD has embraced the responsibility of examining its hiring, recruiting, and retention processes to find and retain well-qualified officers who are representative of the communities that they serve. And while SPD has instituted several laudable recruitment and hiring programs that will help build an inclusive and progressive police department, the hiring, recruitment and retention process would still benefit greatly from the creation of a targeted strategic plan and the other recommendations made in this Report.

⁹² See Schuck and Rabe-Hemp, *Women Police: The Use of Force by and Against Female Officers* (2005) vol. 16, No. 4, Women & Crim. J. 91. Available at <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=239782>.

II. OVERVIEW OF ASSESSMENT AND REVIEW PROCESS

A. DOJ'S REVIEW PROCESS

As part of its review of SPD's hiring and retention practices, DOJ considered its overall processes as well as various materials provided by SPD, including:

- Recruitment and outreach materials;
- Audits conducted by POST in 2016, 2017, and 2018 regarding minimum selection and training standards;⁹³
- Interview questions posed to applicants;
- Separation data for 2017 and 2018;
- Background investigations of potential recruits from 2017 and 2018; and
- Hiring data regarding when applicants fell out of the hiring process.

DOJ also reviewed information about SPD recruitment and hiring programs. These programs help applicants understand what the job of an officer entails, as well as how to navigate certain parts of the hiring process, and include:

- The Physical Agility Practice Tests;
- Post Entry-Level Law Enforcement Test Battery (PELLET B) Workshops;
- The Patrol Ride-Along Program;
- The Dispatch Sit-Along Program;
- The Student Trainee Program;
- The Sacramento City College Pathways Program;
- The Candidate Scholars Program; and
- SPD's Bootcamp Wednesdays.

How a department recruits affects the type of officer it attracts. For this reason, DOJ reviewed these materials to try and identify the type of candidate SPD was recruiting. Recruiting materials that emphasize arrests, weaponry, and enforcement tend to recruit candidates with a "warrior" mentality who may be more likely to use unnecessary or disproportionate force in the future. By contrast, recruiting materials emphasizing service to the community tend to attract candidates with a guardian mentality.

The review of these materials was also crucial to understanding SPD's recruiting priorities, whether these priorities were appropriate for achieving the goal of reducing force and providing safer police operations, and, if appropriate, ensuring these priorities were adequately reflected in

⁹³ POST is required by statute (Pen. Code § 13512) to conduct regularly scheduled inspections to verify that California law enforcement agencies are in compliance with documentation requirements, including background investigation files, and appointment standards.

their recruitment and hiring programs. The review of these materials further helped DOJ determine whether there were any inappropriate barriers to the hiring of a qualified and diverse corps of officers.

Throughout this process, SPD made staff available to provide materials for the review and to answer reviewers' questions. The SPD recruitment commander and staff were instrumental in helping DOJ understand SPD's programs and processes.

B. OVERVIEW OF SPD'S RECRUITMENT AND HIRING PROCESS

Aspiring SPD officers begin the hiring process by completing an online application with the City. The City conducts a preliminary screen of the applications to eliminate from consideration those individuals who do not meet minimum qualifications. At minimum, applicants must be at least 21 years of age, have a high school diploma or GED, be U.S. citizens, and hold a California driver's license.

Applicants meeting the minimum requirements are invited to take the Post Entry-Level Law Enforcement Test Battery (PELLET B). The PELLET B, developed by the POST Commission, is a standardized test intended to measure language ability and writing skills.

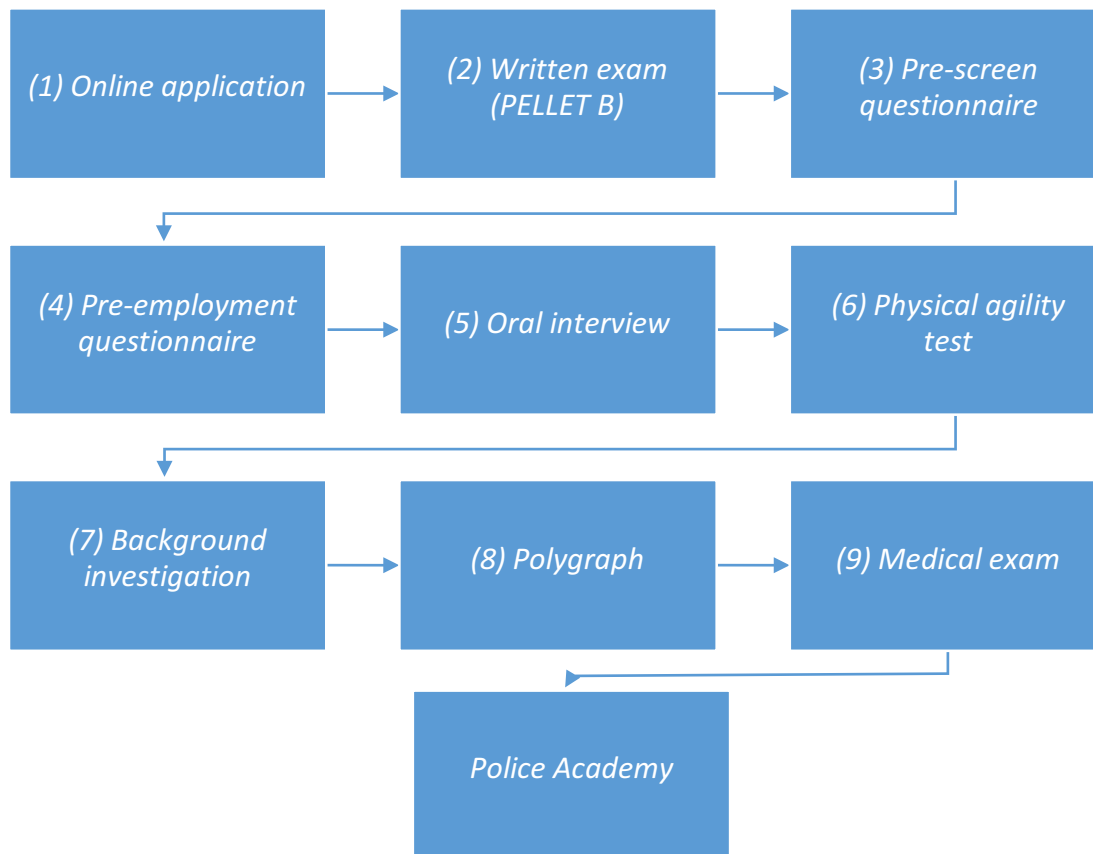
Applicants who pass the PELLET B exam must then complete a 24-item, pre-screening questionnaire. This written questionnaire asks about an applicant's prior criminal activity (including arrests), substance abuse, traffic violations, work disciplinary history, domestic abuse, restraining orders, and any prior internal affairs investigation (for former law enforcement officers).

Those applicants who pass the pre-screening process must also complete another pre-employment questionnaire, pass an oral interview, and successfully complete the physical agility exam before proceeding to the next step of the process – an extensive background investigation followed by a polygraph test. The background investigation focuses on the individual's moral character, ability to handle stress and adversity, work habits, interpersonal skills, and intellectual abilities. This review may draw upon information from various sources including interviews with family, friends, and associates and the reviewing of official records.

Applicants who pass the background check and the subsequent polygraph are offered employment, conditional on passing medical and psychological exams. Once these exams are completed, the applicants are eligible for a place in the academy. The entire hiring process can take between four and eight months. (See Fig. 11, *infra*.)⁹⁴

⁹⁴ At this point, the applicant is a Police Recruit. Recruits attend a 24-week training at the Police Academy.

Figure 11: The Application Process



Individual applicants may fall out of the process at any one of these identified steps. Individuals may be disqualified for a number of reasons, including failing to complete one of the required steps in the process, such as not completing the PELLET B, or failing to complete any one of the pre-employment questionnaires.

Applicants may also be disqualified if they fail to achieve a passing score on testing administered during the application process, or fail to pass screening in the background investigation.

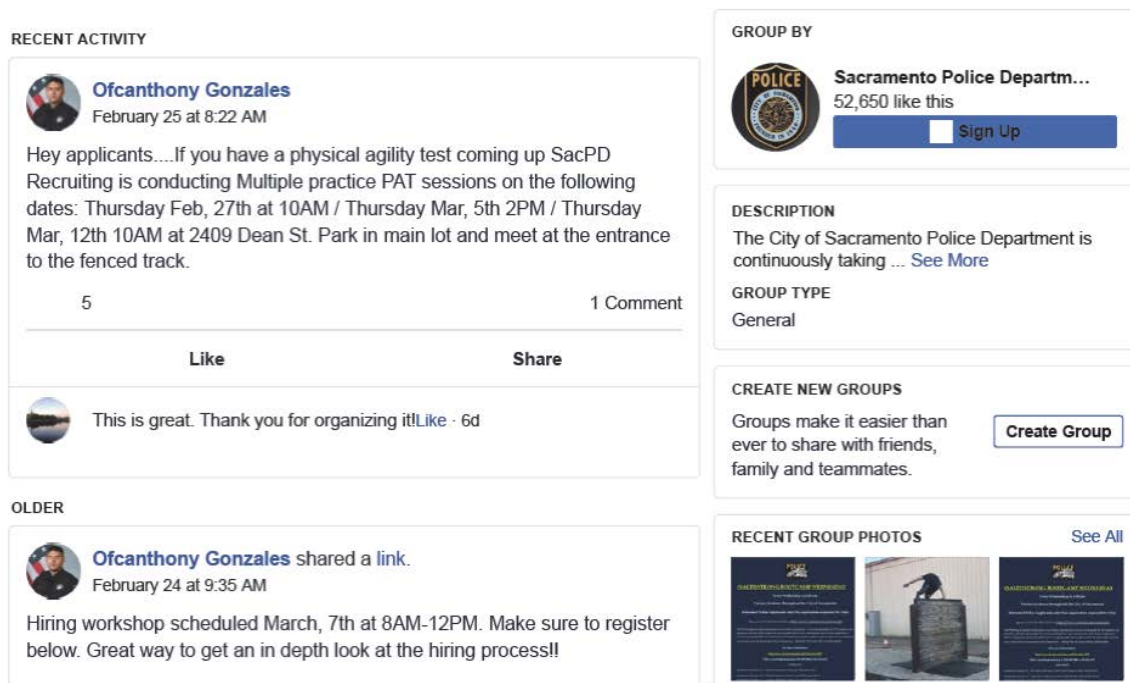
C. SPD RECRUITING MATERIALS

DOJ reviewed recruitment materials such as brochures, job announcements, flyers, presentations, and promotional videos. Many of these materials were well constructed and appeared to be effective at advertising SPD recruiting programs.

In addition to print materials, such as pamphlets and flyers, SPD incorporates digital and social media to advertise its programs. SPD has an Instagram and Facebook page where it promotes “Bootcamp Wednesday,” physical agility practice tests, and hiring workshops, among other

programs. The social media pages are kept up to date with the various offered programs. (See Fig. 12, *infra*.)

Figure 12: Sacramento Police Department Facebook Group



SPD’s website has links to open positions, the hiring process, preparing for the hiring process, recruiting programs, and promotional videos. One promotional video, released on YouTube in February 20, 2020, titled “Be the Difference,” features a young person of color envisioning himself as making a difference in the community by becoming a police officer. This video, which has already received thousands of views and public commendation, is a potentially effective recruitment tool because it communicates the character traits of SPD’s ideal officer candidate and delivers the message in an accessible and popular medium.⁹⁵ Other SPD recruitment videos include a video promoting its Student Trainee Program and the Sacramento City College Pathways Program in partnership with Sacramento City College.⁹⁶

D. DOJ’s STATISTICAL ANALYSIS.

Along with a review of recruitment and hiring materials and programs, DOJ’s Research Center conducted an in-depth, statistical analysis of SPD’s hiring process with the goal of understanding hiring outcomes and the demographic differences between applicants and those who are hired. The analysis focused on when in the hiring process SPD applicants withdrew, the reason for

⁹⁵ Sacramento Police Dept., Be the Difference, YouTube (Feb. 20, 2020), <https://tinyurl.com/SPDRecruitAd>.

⁹⁶ Sacramento Police Dept., Recruiting: Student Trainee Position, YouTube (Oct. 11, 2018), <https://tinyurl.com/SPDtrainee>; see also Sacramento Police Dept., Sacramento City College Pathways Program: Officers Gardner and Officer Basquez, YouTube (Sept. 7, 2018), <https://tinyurl.com/SPDRecruit>.

discontinuing the hiring process, the applicant's race/ethnicity, and the applicant's gender. DOJ's analysis covers individual-level data for all applications completed in 2017 and 2018.

III. PROMISING PRACTICES

DOJ's review revealed several promising SPD recruitment, hiring, and retention practices. First, SPD has a dedicated personnel office that is committed to maintaining a qualified and diverse workforce. Second, SPD is implementing some effective programs to assist in recruitment and in helping applicants with the hiring process. Finally, SPD appears to be conducting its hiring process, including background checks, in accordance with POST standards.

A. SPD PERSONNEL SERVICE'S SIGNIFICANT EFFORTS AND ORGANIZATION

SPD's Personnel Service (Service) has undertaken impressive efforts to recruit a diverse workforce. The members of the Service were passionate and organized in their approaches. Indeed, some measures—such as conducting extensive hiring workshops to assist individuals in completing the new recruit application process and conducting surveys of new recruits regarding the pre-application recruitment process—were the types of things that DOJ's experts have recommended, but not seen, in some other jurisdictions.

The Recruitment Unit thoughtfully integrates a number of best practices for recruitment—many of which are supported in the research literature on recruitment—and continually reflects on and adjusts how they address the hiring needs of the department. These recruitment strategies, while not specific to law enforcement, are nonetheless essential for recruiting a diverse workforce that represents the values of the organization. These general best practices, already implemented by SPD, include:

1. Establishing a diverse recruiting team;⁹⁷
2. Providing a concise mission statement that clearly communicates the values of the department, and what the department looks for in a qualified candidate;⁹⁸
3. Advertising widely;

⁹⁷ Kalev et al., Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies (2006) 71 Am. Soc. Rev. 589, 590.

⁹⁸ SPD's mission statement, from their "Careers" brochure: "The mission of the Sacramento Police Department is to work in partnership with the community to protect life and property, solve neighborhood problems, and enhance the quality of life in our city." Morison, Off. of Community Oriented Policing Services, U.S. Dept. of Justice, *Hiring for the 21st Century Law Enforcement Officer: Challenges, Opportunities, and Strategies for Success* (2017) pp. 5-6. Available at <https://cops.usdoj.gov/RIC/Publications/cops-w0831-pub.pdf>; Wilson, *Strategies for Police Recruitment: A Review of Trends, Contemporary Issues, and Existing Approaches* (2014) vol 14, No. 1, Law Enforcement Exec. Forum 78, 84.

4. Conducting targeted recruitment for gender and minority diversity;⁹⁹ and
5. Providing a clear hiring pathway for future employment in law enforcement.¹⁰⁰

SPD's proactive approach to recruiting includes surveying new recruits to better gauge the success of its recruiting practices. Last year, SPD surveyed 129 recent recruits regarding which recruitment materials, workshops, or events the recruit had participated. This kind of auditing provides valuable feedback so that SPD can further support successful measures and re-work ineffective measures.

B. SPD IMPLEMENTS HIRING WORKSHOPS AND VARIOUS PROGRAMS TO ASSIST INDIVIDUALS IN COMPLETING THE NEW RECRUIT APPLICATION PROCESS

SPD has created and implemented workshops and programs aimed at recruitment and assisting applicants throughout the hiring process, like regularly holding a "Hiring Process Workshop." These workshops, held at the Police Academy, assist applicants by explaining each step of the hiring process and advising on how applicants can successfully prepare. SPD also provides applicants with tips on interview preparation, attire, and physical agility. These workshops are advertised on flyers, the Eventbrite website, social media, and SPD's website.

SPD also assists applicants by providing practice physical agility tests throughout the year, and held seven practice tests in 2018 alone. It also periodically offers workshops to help candidates prepare for the PELLET B exam. Other SPD recruiting efforts give applicants a window into daily police work, such as the Patrol Ride-Along Program and a Dispatch Sit-Along Program.

Several SPD programs target college students as potential applicants, including the Student Trainee Program, the Sacramento City College Pathways Program, and the Law Enforcement Candidate Scholars Program. The Law Enforcement Candidate Scholars Program, for example, provides academic, career, and leadership development for students to prepare them to apply to be law enforcement officers. Upon completion of the program, students receive a Law Enforcement Certificate and can receive a position as a law enforcement cadet in a POST-certified academy. SPD has created an informative brochure and holds several information sessions regarding the Law Enforcement Candidate Scholars Program at Sacramento State University each spring.

⁹⁹ Avery and McKay, Target Practice: An Organizational Impression Management Approach to Attracting Minority and Female Job Applicants (2006) vol. 59, No. 1 Personnel Psychology 157.

¹⁰⁰ Ridgeway et al., RAND Corporation, *Strategies for Improving Officer Recruitment in the San Diego Police Department* (2008) p. 30. Currently, SPD participates in a number of programs designed to provide high school and college students with a pathway to a career in law enforcement. These programs include the Law Enforcement Candidate Scholars program, the Public Safety Pathway at Inderkum High School, and the Summer Internship Program at SPD.

Additionally, SPD sponsors the “Bootcamp Wednesdays” Program—an innovative approach which invites potential recruits to workout with current officers, working on physical skills necessary to pass the physical agility test. This creative, forward-thinking mechanism helps individuals pass the physical tests that are part of the hiring process while providing them with the opportunity to form relationships with existing SPD sworn personnel.

C. SPD’S BACKGROUND INVESTIGATIONS COMPLY WITH POST STANDARDS

SPD conducts its background investigations consistent with the guidelines of the POST Commission. In 2019, SPD received a positive audit from POST on their background investigation process. DOJ’s review found that SPD’s approach to conducting background investigations is thorough and unbiased, with final determinations adequately supported by the findings of the investigations. DOJ, however, has recommendations to further improve the background investigation process.

IV. RECOMMENDATIONS FOR IMPROVEMENT

A. RECRUITMENT & HIRING

Although SPD has exhibited positive recruitment and hiring strategies, these strategies are currently unmoored from any official policy or departmental plan. Continued success of its many effective programs may not be sustainable without a detailed strategic plan. A good strategic plan would help SPD by providing an outline for recruitment and hiring strategies, and guidance for future training and development initiatives. DOJ therefore recommends SPD develop a detailed strategic plan as part of a comprehensive approach to improving its recruiting, hiring and retention efforts.

A well-designed strategic plan will identify deliverables and objectives, and provide an outline for SPD to follow as it tailors its outreach strategy, recruitment materials, and various programs to meet its staffing goals. Among other things, SPD’s strategic plan should identify specific targets like increasing the number and quality of the applications it receives, recruiting and hiring more diverse applicants, and increasing female officer retention. It should also include a more robust audit process that assesses current recruitment efforts and works to continually assess future efforts.

SPD already uses a recruiting survey and tracks and analyzes participation in the community events in which its recruiting team participates. Therefore, SPD should enhance these efforts by surveying applicants who drop out of the hiring process; surveying participants in SPD recruitment, hiring, and community outreach programs; evaluating the effectiveness of those programs; and conducting thorough exit interviews to identify causes of attrition. Having an ongoing audit process in place would help SPD continuously improve its recruiting, hiring, and retention efforts.

1. Recommendation: SPD should create and implement a formalized recruitment plan that codifies existing work and expands efforts toward attracting high-quality, diverse officer corps.

DOJ recommends that SPD develop a strategic recruitment plan that memorializes the various approaches that are working according to evidence-based metrics, including techniques, programs, and types of interactions that appear successful in yielding good recruits. More so, the strategic plan should consider additional approaches or new strategies that SPD might use to access diverse populations that may not readily identify law enforcement as a promising professional path.

A good strategic plan operationalizes goals and overall objectives in clear terms that can be measured.¹⁰¹ Generally, project management literature recommends that objectives be specific, measurable, accurate (e.g., precise), realistic, and time-bound or time-limited (e.g., have a time frame with an end date assigned to them) (SMART).¹⁰² A good plan would then outline what deliverables would translate the strategic mission of the plan “into actionable realities”¹⁰³ and provide clear deadlines for each step necessary to implement the identified deliverables.¹⁰⁴

As a first step to implementing this strategic plan, SPD should put a formal departmental policy in place that codifies the plan’s approaches and commitments. This is an important element of ensuring that SPD’s work involves more than the dedicated efforts of just a few full-time personnel—instead becoming a firm commitment of the whole of the organization. Currently, SPD has no such policy.

DOJ recognizes the careful thought and consideration that has gone into SPD’s current approach to attracting and hiring well-qualified officers. Regardless, DOJ emphasizes the project management concepts discussed above and recommends the existing positive work and vision be synthesized and focused into a defined strategic vision that identifies clear approaches, distinct milestones, and delineated deadlines for achieving SPD’s goals.

¹⁰¹ Heldman et al., *PMP Project Management Professional Exam Study Guide* (2007) p. 109 [“Objectives are quantifiable criteria used to measure project success. They describe the ‘what’ you’re trying to do, accomplish, or produce. Quantifiable criteria should at least include schedule, cost, and quality measures.”]

¹⁰² See, e.g., Westland, *The Project Management Life Cycle* (2007) p. 32; Lewis, *Fundamentals of Project Management* (2007) p. 51; Resch, *Strategic Project Management Transformation: Delivering Maximum ROI & Sustainable Business Value* (2011) p. 111; Jones, *Project Management Survival: A Practical Guide to Leading, Managing and Delivering Challenging Projects* (2007) p. 59–61.

¹⁰³ Ferraro, *Project Management for Non-Project Managers* (2012) p. 172.

¹⁰⁴ Martin and Tate, *Getting Started in Project Management* (2002) p. 128.

2. Recommendation: SPD should look to incorporate elements from successful recruitment strategies employed by other departments and identified in best practices literature.

DOJ recommends that SPD explore strategies that other jurisdictions have employed to increase diversity and enhance the preparedness of their new personnel. The Chicago Police Department, for example, successfully implemented a recruiting strategy that attracted a pool of candidates comprised of 71 percent minority individuals who sat for the April 2016 police exam, even in the midst of significant public attention and a U.S. Department of Justice investigation of the department.¹⁰⁵

3. Recommendation: SPD should consider establishing and maintaining an employee referral system.

SPD has identified a number of appropriate and straightforward mechanisms that it currently employs to attract new talent, including job postings, job fairs, and advertising campaigns. Still, DOJ recommends that SPD establish a more formalized employee referral system and provide incentives to current officers who successfully recruit a new officer. Employee referral systems where existing departmental personnel are involved in a formal process, and incentivized for recruiting someone into the hiring process, are routinely cited as the best employee recruitment tool available.¹⁰⁶ For instance, applicants who are referred and sponsored by an existing employee “may be less likely to withdraw than [applicants] who do not perceive any personal connection.”¹⁰⁷

However, SPD’s workforce needs to change to better reflect the community and embody a greater diversity of life experience. Therefore, although employees should be a part of any comprehensive recruitment strategy, such referral strategies may not fully address the department’s recruitment, hiring, and retention goals. Having employees help find candidates may bring in qualified applicants who have more of a connection to the department, but may result in these referrals being too similar to existing employees and therefore less helpful at expanding diverse representation by perpetuating the demographic makeup of the force or maintaining a homogenous mindset. Thus, SPD should be mindful to balance any referral-based strategy with competing hiring and recruitment priorities it has adopted, including hiring a

¹⁰⁵ Spielman, *CPD Exam Applications are 71 Percent Minorities after Outreach Effort*, Chicago Sun Times (Feb. 22, 2016). Available at <https://chicago.suntimes.com/city-hall/2016/2/22/18596481/cpd-exam-applicants-are-71-percent-minorities-after-outreach-effort>. In addition, SPD can draw on a wide range of studies and reference materials for guidance on improving its recruiting processes. See, e.g., Morison, *supra*, note 98; Internat. Assn. of Chiefs of Police & Off. of Community Oriented Policing Services, U.S. Dept. of Justice, “Law Enforcement Recruitment Toolkit” (2009). Available at <https://cops.usdoj.gov/pdf/vets-to-cops/e080921223-RecruitmentToolkit.pdf>; Wilson et al., RAND Corporation, *Police Recruitment and Retention for the New Millennium: The State of Knowledge* (2010). Available at http://www.rand.org/content/dam/rand/pubs/monographs/2010/RAND_MG959.pdf.

¹⁰⁶ See, e.g., Chartrand, *Companies Supplement Recruiting with Employee Referrals*, N.Y. Times (Aug. 3, 1997). Available at <https://archive.nytimes.com/www.nytimes.com/library/jobmarket/080397sabara.html>.

¹⁰⁷ Barber, *Recruiting Employees: Individual and Organizational Perspectives* (1998) p. 31.

diverse and capable corps of officers, and adopt recruitment strategies and policies that eliminate undue barriers to achieving such goals.

4. Recommendation: SPD should seek community input on the recruitment and hiring process.

SPD's "[l]eaders should seek public input on hiring to ensure that it reflects community values . . . Without community input, a department's perception of the ideal candidate may not align with community values."¹⁰⁸ Although it appears that SPD's Personnel Service has a unified, well-defined sense of the ideal candidates SPD wants to recruit, consulting community organizations and representatives for their input regarding the "desired candidate characteristics" of the ideal SPD recruit could yield many benefits, such as improving community engagement and creating a more diverse workforce.

Civic organizations, community-based organizations, and other stakeholders can be engaged in a variety of recruitment activities and support. For example, SPD may engage stakeholders by holding sessions where SPD presents its recruitment needs and engages the stakeholders in discussions about how to best meet those needs and promote their assistance and commitment in meeting the recruitment goals. Community members may also be used as recruiters.

5. Recommendation: SPD should invest in strengthening or expanding its Law Enforcement Candidate Scholars Program.

SPD's Law Enforcement Candidate Scholars program is a forward-looking and promising program used to identify and develop prospective candidates. SPD personnel provided accounts of having worked with students for several years on various professional and personal development issues. These relationships are aimed at trying to ensure that, when eligible, the students can be successful in the hiring process. In many instances, the scholars embody the diverse backgrounds and desirable attributes that SPD seeks.

As part of the process of refining the program, DOJ recommends that SPD, or an outside entity, consider what elements of that program work, what could be expanded, and what might be strengthened.

6. Recommendation: SPD should ensure that all of its recruitment messaging and materials emphasize the best messages to attract the ideal candidates.

A coordinated, codified recruitment approach benefits SPD by ensuring that its various messaging and materials are consistent with attracting the varied and qualified recruits that SPD wants. This includes phasing out or revamping some of the current recruitment materials. In particular, one of SPD's recruitment brochures appeared somewhat dated and its contents

¹⁰⁸ Leadership Conf. on Civil and Human Rights, *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing* (2019) p. 284.

focused heavily on militaristic images and “toys”: a military-style armored personnel carrier, a police helicopter, and a patrol car. Instead, SPD’s brochures should project SPD’s priorities of hiring diverse, well qualified officers who view law enforcement as a public service and a form of community caretaking. (See Fig. 13, *infra*.)

Figure 13: Sacramento Police Department Recruitment Brochure



Fortunately, SPD’s recent digital outreach materials, including SPD’s recent, outstanding recruitment video,¹⁰⁹ better reflect SPD’s caretaking and public service mission.

7. Recommendation: SPD should continue to regularly assess which parts of the hiring process disproportionately affect under-represented groups.

SPD recruitment and hiring data from 2017 and 2018 reveal that a higher proportion of Black, Hispanic, and female applicants fail to schedule or take the required PELLET B exam. Black, Hispanic, and female applicants are more likely to fail the PELLET B exam, and nearly 63 percent of Black applicants and 44 percent of Hispanic applicants do not show up for the PELLET B exam, compared to 50 percent of white applicants. Finally, women are more likely than men to fail the Physical Agility Test. These statistics show an opportunity for SPD to add mechanisms for representatives to stay in contact and engage applicants as they move through the different stages, such as assigning a staff member to mentor applicants as they proceed through the hiring process.

SPD should identify the barriers that prevent women and minority candidates from applying and completing the hiring process and evaluate solutions that reduce these barriers yet permit them to

¹⁰⁹ Sacramento Police Dept., Be the Difference, YouTube (Feb. 20, 2020), <https://www.youtube.com/watch?v=xaRXwnndydg>.

more effectively recruit and hire women candidates. For instance, a study in southeastern Pennsylvania found that women officers believed that physical agility tests, the culture of police agencies, and the failure to proactively recruit women were all factors that prevented the successful recruitment of women.¹¹⁰ Other studies found that women were more likely than men to share concerns over meeting agility requirements and to express interest in the service-oriented aspects of policing.¹¹¹ In light of these findings, researchers concluded that agencies could improve their recruitment of women by: (1) increasing participation of women officers in recruitment events; (2) reassessing the physical agility standards to ensure that they appropriately measure the real-world physical demands of the job, rather than utilizing antiquated measures; (3) assessing whether some aspects of physical agility testing could be practiced in the academy; and (4) offering physical agility training to candidates.¹¹²

As part of its proactive engagement in recruiting, SPD currently offers serious applicants physical agility trainings as well as PELLET B test preparation from a reputable company with experience in training for this exam. However, according to a survey administered by SPD's Recruiting Unit, a majority of officers hired by SPD within the past three years neither participated in practice PELLET B workshops, nor participated in physical agility trainings. SPD should focus on strategies to increase the number of qualified applicants participating in these events. For example, SPD may wish to examine how it advertises the PELLET B workshop to applicants, how frequently it offers the workshop, and when and where it is available. Encouraging increased participation in the workshop among minority applicants may lead to increased follow through with testing, resulting in a more diverse set of recruits.

SPD should also consider surveying applicants about the hiring process. A well-designed survey could help identify why a high number of people do not schedule or do not show up for the PELLET B exam (as well as identify other obstacles in the hiring process), and inform strategies that improve the number of people who eventually schedule and take the exam.

Finally, going forward, SPD should regularly evaluate its background check process and physical agility test to assess whether these methods are effective in screening for essential qualifications to succeed as a police officer in Sacramento. These topics might be particularly well-suited for community and officer input so that they can help identify the traits and characteristics for which a background and physical agility test should screen. Even while remaining mindful of legal parameters with respect to some mandatory qualifications, SPD can review its testing and physical agility components so that more well-qualified, experienced, and diverse candidates succeed.

¹¹⁰ Cordner and Cordner, *Stuck on a Plateau? Obstacles to Recruitment, Selection, and Retention of Women Police* (2011) vol. 14, No. 3, Police Quarterly 207, 218.

¹¹¹ Castaneda and Ridgeway, RAND Corporation, *Today's Police and Sheriff Recruits: Insights from the Newest Members of America's Law Enforcement Community* (2010) pp. 37, 59, 72; Raganella and White, *Race, Gender, and Motivation for Becoming a Police Officer: Implications for Building a Representative Police Department* (2004) 32 J. Crim. Just. 501.

¹¹² Castaneda and Ridgeway, *supra*, note 111, pp. 72-73; Cordner and Cordner, *supra*, note 110, p. 221-222; Morison, *supra*, note 98, pp. 10-11.

B. BACKGROUND/VETTING

DOJ reviewed 144 randomly selected background investigations of SPD recruits comprised of 64 investigations from 2017 and 80 investigations from 2018 to evaluate whether anything about the nature or content of the background process is negatively impacting SPD's ability to secure well-qualified, diverse personnel.

DOJ observed some inconsistencies with respect to the valuation of information received during the background investigation relating to academic records, deception, theft, and family associations. For instance, in one case involving a white male candidate, the candidate's failure to achieve a passing grade point average during his academic studies was characterized as the candidate "losing interest." In contrast, in a few cases involving minority candidates, low GPAs appeared to be differentially and negatively characterized as "reflecting a lack of commitment and discipline."

In another case, a white male candidate was initially deceptive to investigators about his drug use. He had also pled guilty to a theft several years prior to his application. Nevertheless, SPD approved the candidate to continue in the process. In contrast, DOJ identified at least ten candidates of color, primarily Hispanic/Latino, in which the background investigations were suspended immediately, or soon after, any deception was detected.

The background investigation review also highlighted several instances where candidates who had family members with criminal backgrounds appeared to be viewed less favorably than other candidates. A candidate's personal conduct and decisions regarding whom they associate with are critical considerations for any background investigation. But having family members—who are, by definition, not freely chosen associates—with criminal backgrounds should not alone be disqualifying factors unless the candidate: (1) personally participates in, perpetuates, or obstructs authorities from investigating criminal activities as a result of the relationship; or (2) fails to disengage themselves from criminal activities involving family.

While these discrepancies do not alone establish a definitive pattern or trend, they underscore the importance of ensuring that vetting processes are consistent and standardized in order to prevent bias from influencing the hiring process. DOJ does not question the decision to suspend the background investigations of any candidates who are deceptive or who appear to have particular histories that should prevent their employment because they are inconsistent with the requirements and duties of a law enforcement officer. Hiring anyone—who of any race, ethnicity or gender—who does not meet fair, codified, minimum standards places the organization and the profession at risk. Rather, SPD *must* apply these standards *uniformly* regardless of the race, ethnicity or gender of the candidate, and ensure that the standards they apply do not have an unwarranted disproportionate impact on certain groups.

DOJ recommends that SPD continually evaluate its processes and procedures to ensure that its hiring and vetting standards are applied consistently. After reviewing the background investigations from 2017 and 2018, DOJ formed some specific recommendations for processes that SPD should put in place to ensure that it is adequately monitoring and assessing its background check process and providing proper training for personnel tasked with conducting background investigations to ensure fair and uniform application of such standards.

1. Recommendation: The decision to suspend or not select a candidate based on his or her background should rest at the level of Deputy Chief or higher.

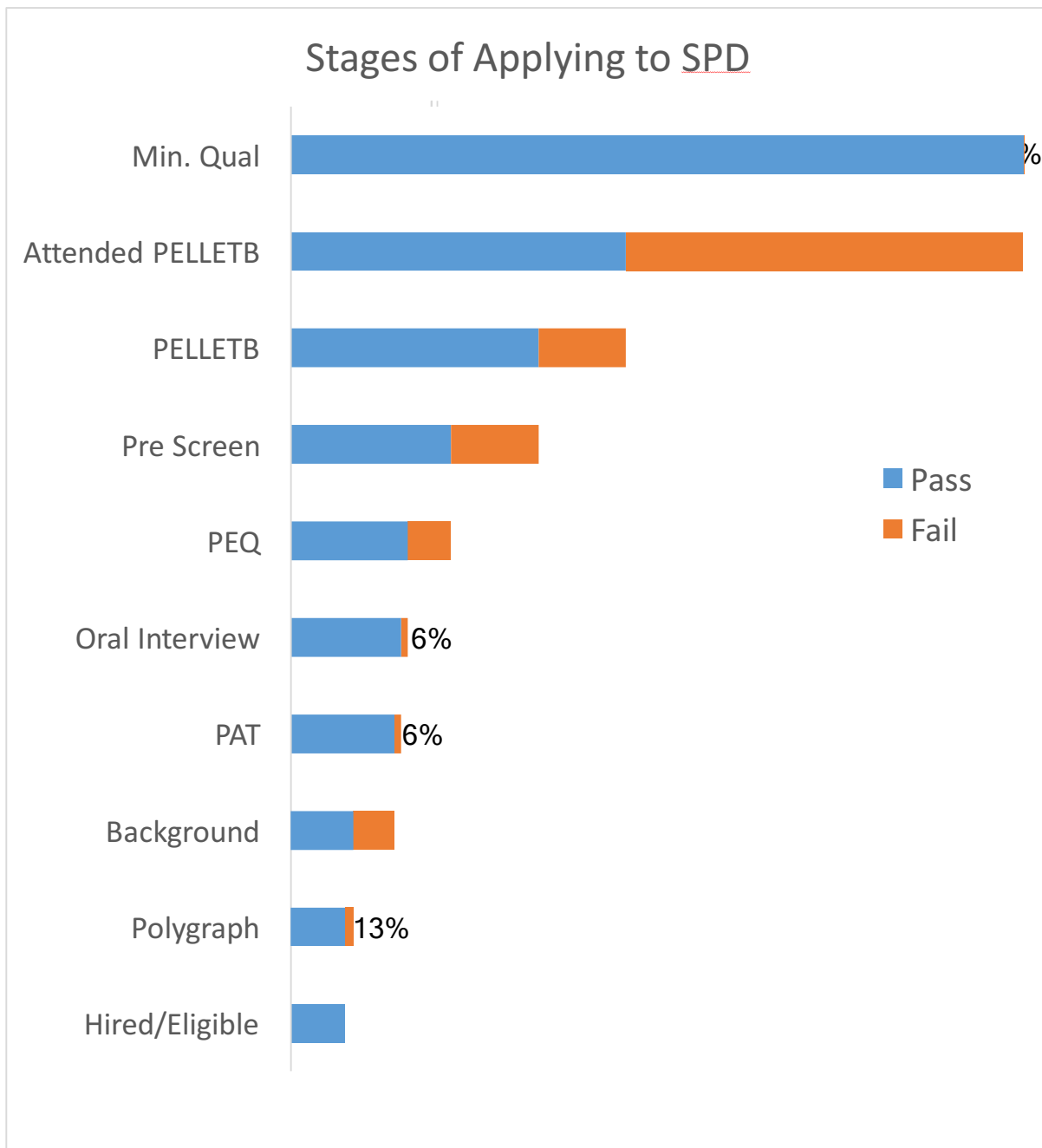
The decision to discontinue a background investigation due to the discovery of disqualifying information or to not select a candidate because of the results of a background investigation is an important one. To ensure that standards are applied consistently, a member of the command staff of sufficiently high rank (i.e., a Deputy Chief) should ultimately review and sign off on such decisions.

2. Recommendation: SPD should prepare a quarterly recruitment and hiring report for the police chief analyzing critical data regarding each stage of the hiring process, including success-rate data about candidates who are not excluded during the background phase of the process.

In the daily operations of a police organization, it can be difficult for police executives to understand how departmental processes may be affecting the pool of incoming recruits. Generating a quarterly report, which identifies (1) where certain candidates are dropping out of the hiring process, (2) whether the candidates who are dropping out exhibit characteristics that otherwise reflect SPD's ideal candidate, (3) whether certain groups are disproportionately dropping out at a certain point in the hiring process, and (4) evaluates approaches to eliminate unwarranted barriers or help otherwise qualified candidates overcome certain barriers in the recruiting and hiring process, will provide an important opportunity for internal transparency and scrutiny.

DOJ's Research Center conducted a statistical analysis of where applicants drop out at each phase of the hiring process that may serve as a useful template for SPD going forward. (See, e.g., Fig. 14, *infra*.)

Figure 14: SPD Application Process



3. Recommendation: All recruiters and background investigators should receive periodic training in procedural justice and implicit bias focused on specific issues or strategies relevant to the hiring process.

Personnel involved in the recruitment and background process should receive training that provides strategies to ensure that decision making is unbiased and not centered on generalized assumptions.

4. Recommendation: SPD should conduct periodic audits of background investigations to ensure that all standards are applied consistently, and that SPD is taking the steps necessary to obtain a well-qualified, diverse workforce.

SPD should conduct audits of its background investigations to ensure consistency and fair evaluations. It may be useful to analyze data by investigator to identify and timely redress any problematic individual patterns, practices, or trends.

C. RETENTION

A 2010 RAND report summarized the increasing importance of officer retention to the ability of police departments to serve the community:

Maintaining the police workforce level is one of the most salient challenges facing law enforcement today. In the long run, both the supply of and demand for qualified officers are changing in a time of increasing attrition, expanding law-enforcement responsibilities, and decreasing resources.¹¹³

The RAND study cited a number of reasons for officers leaving police departments, including: “(1) the pull of other opportunities; (2) actual and potential compensation; (3) personal characteristics and demographic factors; (4) organizational health, policy, and culture; and (5) employee needs.”¹¹⁴ DOJ’s review determined that SPD should focus specifically on the latter two, improving organizational features and meeting employee needs to keep existing officers on the job, performing successfully for longer.

1. Recommendation: SPD should develop a formal officer retention plan.

Because “[i]t is far more costly and time-consuming to recruit an officer than to retain one,” SPD should focus on implementing a clear strategy to retain existing personnel.¹¹⁵ Just as SPD should formalize and codify its recruitment strategies, it should establish a similar plan with respect to retaining existing officers. While many SPD leaders continue to put thought and effort into strategies and techniques for keeping sworn personnel engaged and professionally satisfied, these efforts would be bolstered by the development of a written strategic plan with the input of officers, officer families, and union representatives. A strategic plan regarding retention would help the department organize and institutionalize SPD’s initiatives and programs that promote retention.¹¹⁶

¹¹³ Wilson et al., *supra*, note 105, p. iii.

¹¹⁴ *Id.* at p. 37.

¹¹⁵ *Id.* at 2.

¹¹⁶ *Id.* at pp. 44-45 (recommending that departments “conduct an evidence-based analysis of department retention needs”).

2. Recommendation: Internal procedural justice should be recognized as a key officer retention strategy.

Employees in any organization may decide to leave a company if they are unfamiliar with critical policies, do not understand why decisions are made, or feel like some employees are favored over others. In law enforcement, these issues are particularly acute. While SPD promotes officers applying procedural justice in their daily interactions, SPD should also review its employee interactions to ensure that it is practicing procedural justice.

When reviewing its employee interactions, SPD should cultivate processes that provide officers the understanding of what they are expected to do and of the consequences if they fail to meet those expectations. For example, changes to SPD's policies and processes with respect to Internal Affairs, misconduct investigations, and discipline can be effective officer retention strategies if rank and file officers can provide input on the policies and understand how new procedures will be clearer and fairer for them going forward. Similarly, a disciplinary matrix, as explained in the *Discipline* section of this report, may provide officers confidence that SPD addresses officer misconduct in a fair and consistent manner.

3. Recommendation: SPD should examine its current officer wellness programs and initiatives, recommit to those that are working, and establish new initiatives to address identified opportunities.

President Obama's Task Force on 21st Century Policing observed, "[s]afety and wellness issues affect all law enforcement professionals, regardless of their management status, duty, or tenure."¹¹⁷ Just as "[a]n officer whose capabilities, judgment, and behavior are adversely affected by poor physical or psychological health . . . may be of little use to the community he or she serves," such an officer may simply not remain a law enforcement professional for the length of his or her career.¹¹⁸

SPD should critically evaluate its current officer wellness and support programs—potentially prioritizing resources and staff to expand promising approaches and to implement new initiatives to address SPD's specific challenges. While these challenges occur in every profession and every law enforcement agency, DOJ recommends that SPD consider retention efforts aimed at officers with caretaking responsibilities for other family members, such as children or parents who require assistance. To the extent feasible, these could include conversations regarding flexible scheduling, off-duty family functions, on-site and off-site childcare assistance, and establishing support groups or networks.

¹¹⁷ President's Task Force on 21st Century Policing, Off. of Community Oriented Policing Services, Final Report of the President's Task Force on 21st Century Policing (May 2015) p. 65. Available at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

¹¹⁸ *Id.* at p. 61.

4. Recommendation: SPD should regularly conduct structured exit interviews of departing personnel.

DOJ did not see evidence that SPD regularly debriefs with employees who are leaving the Department. The exit documents DOJ reviewed offered little insight as to why personnel were leaving. Going forward, SPD should commit to gaining a deeper understanding as to why its departing personnel are choosing to leave SPD—and what it can change to help retain employees in the future. Exit interviews also provide an agency with an opportunity “to educate employees about how they can come back to the agency”¹¹⁹ and ensure the sort of engaged interactions that encourage employees to promote the Department even after they are no longer working for SPD.

The data SPD provided showed no dominant trends in the reasons for separation, which underscores the potential value for one-on-one discussions with departing personnel.

5. Recommendation: SPD should assess its evaluation process and ensure that it is substantive and valuable for all employees.

SPD is not alone in not leveraging the potential of performance evaluations. Law enforcement agencies generally have not embraced the type of substantive, meaningful performance evaluations that are critical to employee development and retention in other professions and industries.

As part of developing a culture of continuous self-improvement, SPD should commit to ensuring that it has a system for ongoing, comprehensive evaluations that include allowing officers to provide feedback concurrently with the review they are given by their supervisor. “Research consistently shows a strong relationship between feedback and organizational commitment.”¹²⁰ At the same time, it can benefit officer performance and skill development, as it may provide an opportunity for the superior to both, better understand an officer’s mindset and to educate the officer as to the organizational rationale for any areas of concern. Although so-called “upward” or “360 degree” reviews are seen by some as contrary to a police organization’s command and control structure, the ability for subordinates to provide feedback about managers can provide all officers with a sense that their opinions and concerns are important to the organization.

¹¹⁹ Wilson et al., *supra*, note 105, p. 47.

¹²⁰ *Id.* at p. 59.

DATA MANAGEMENT

I. GENERAL OVERVIEW

Data management is crucial to safe and effective policing. Effective use of data and technology helps law enforcement agencies investigate and prevent crime, improve interactions with the public, ensure that operations are effective and efficient, and identify, analyze, and develop solutions to make law enforcement interventions, like use of force, rarer and safer. Among other things, data can inform interactions with persons with mental health or other disabilities, and persons who are homeless. Departments can also use data to analyze trends in arrests, stops, and use of force incidents that can illustrate disparate treatment of racial and ethnic groups and other problematic trends. At the same time, departments must be mindful that emerging technologies have the potential to create privacy and cybersecurity concerns and, the use of some of these technologies and data may unintentionally exacerbate existing inequalities and biases found within the criminal justice system.

This section assesses various aspects of SPD's data management. SPD employs several technological tools and data systems to analyze its performance and assess crime and public safety trends. These systems include but are not limited to: a record management system; computer aided dispatch (CAD); gunshot detection system; automated license plate readers; and police observation devices (PODs) or cameras. SPD's Crime Analysis Unit produces approximately 45 routine reports for SPD's distribution and use. The reports include standard crime counts, performance measures, crime maps, and a variety of lists identifying offenders with warrants, parolees, and addresses with frequent calls for service. The unit also provides routine reports on special issues such as gun violence, mental health and firearms, and homelessness. The reports are provided to the Deputy Chief of Operations and area captains in weekly meetings. Analysts also brief area captains and their command staff about crimes occurring in their respective areas.

II. OVERVIEW OF ASSESSMENT AND REVIEW PROCESS

DOJ did not conduct a comprehensive review of SPD's data systems; however, DOJ did review SPD's data management as it relates to use of force, mental health, and bias issues. DOJ analyzed SPD's general orders that relate to technology and data. Specifically, DOJ reviewed the following orders:

- General Orders 320.03-Computer Data Security Systems, 320.04-Computer Access/Security Authorization, and 320.06-Criminal History Inquiries. These orders govern data security and access to computers and data systems.
- General Order 340.01-Report Quality Control/Review. This order addresses the timeliness and integrity of data found in the following police reports: general offense reports, incident reports, traffic collision reports, missing person reports, motor vehicle

reports, and arrest reports. These reports and the resulting data constitute the majority of data SPD collects and maintains.

- General Order 510.05-ShotSpotter Flex System. This order governs the use and response to gunshot detection alerts sent through the ShotSpotter Flex System and addresses the Communication Center and officers' responses to such alerts.
- General Order 525.03-In Car Camera. This order establishes procedures to ensure that digital in-car camera systems are used to accurately and independently document the actions of officers and citizens.
- General Order 525.07-Body-Worn Camera. This order provides officers with instructions on when and how to use body-worn cameras.

Additionally, DOJ reviewed various Crime Analysis Unit reports and conducted a site visit, where DOJ team members observed regularly-held meetings in which these reports were discussed, including the Organizational Update Meeting and the Captains' and Crime Analysis Unit Meeting. During the site visit, DOJ interviewed the Mental Health and Homeless Response team in an effort to understand SPD's crisis intervention efforts and the data underlying such efforts. DOJ also conducted several interviews with rank and file officers from various divisions, including those in specialized units, regarding how they use data in the regular course of their duties.

This section offers recommendations for improving data quality to make policing safer for officers and the community, while also protecting privacy, cybersecurity and civil liberties.

III. PROMISING PRACTICES

SPD's data collection, management, and analysis operation has several positive features. First, SPD's Crime Analysis Unit appears to be relatively robust and creates several data-based reports. In interviews with rank and file officers, the officers generally expressed satisfaction with the Crime Analysis Unit and indicated that there are many tools and reports available to them.

Second, SPD shares many of its data-based reports with the public, which helps build transparency with the community. SPD provides public access to data on officer-involved shootings, deaths in custody, and vehicle stops on its website. Additionally, SPD's website contains a variety of data summaries, an interactive crime map, dispatch data, and crime report data. While SPD should be commended for providing such data to the public, some of the data is not up-to-date. Notably, SPD has only published use of force statistics from 2015, 2016, and 2017. The lack of real-time, updated information undermines SPD's otherwise strong efforts toward transparency.

Finally, SPD has recently contracted social psychologist Dr. Jennifer Eberhardt to collect new data and conduct a study that will analyze the effects of implicit bias on police interactions. DOJ's understanding is that this study will be based upon data Dr. Eberhardt will collect regarding officer behavior and language in interactions, stops, and arrests, and how this behavior can lead to disparate outcomes and uses of force. While SPD's study is only in its beginning stages, it is reassuring that SPD is seeking to collect new data and analyze it in a way that could assist SPD and its officers in eliminating bias.

IV. RECOMMENDATIONS FOR IMPROVEMENT

While SPD has shown a commitment to efficiently and effectively collect, analyze, and manage data, its procedures and practices could be improved in several ways. DOJ observed four broad areas for improvement: (1) data quality; (2) data collection regarding mental health and other disabilities, and homelessness; (3) system efficiency; and (4) adherence to the ethical use of data through transparency, appropriate analysis, and solicitation of public input, when adopting new technology. The following recommendations are aimed at meeting these goals.

1. Recommendation: To improve data quality, SPD should create clear operational policies for collecting key data elements, such as information about interactions with homeless persons and persons with mental health and other disabilities.

In site visit interviews, DOJ heard from a number of stakeholders that SPD's data quality could be problematic in some instances. Specifically, officers raised concerns regarding the accuracy of data collected on mental health and homelessness. SPD is dedicating substantial resources to implementing special programs for crisis intervention and homelessness services. SPD has a Mental Health Unit, consisting of one sergeant and three officers.¹²¹ SPD dispatches these officers to handle mental health crises in certain situations such as when the crisis is severe, when the team has a relationship or familiarity with the individual, or when an individual or residence disproportionately requires police resources and a long-term resolution is desirable. In addition to its specialized Mental Health Unit, all SPD officers receive training in crisis intervention.

SPD tracks mental health and homelessness related incidents through data entered by officers into the CAD system. Officers are required to check a box on the CAD to flag that the call involved an individual who is homeless or has a mental health and/or other disability. The mental health flag is marked when the officer believes or has learned that a mental health and/or other disability was an underlying cause of a person's behavior. However, site visit interviews indicated that, while officers are mandated to flag mental health and/or homelessness related calls, doing so is ultimately an act of discretion that can lead to varied standards and practices amongst individual officers. That means that SPD's data concerning the number of individuals it

¹²¹ In the past, these officers partnered with clinicians through the Sacramento Department of Behavioral Health. However, they are not currently partnered with clinicians and it unclear when that partnership will resume.

encounters facing mental health and/or other disabilities and/or housing insecurity may not paint the full picture.

Inaccurate data on these points can waste resources directed toward, and reduce the effectiveness of, police and social services that are meant to help these populations. Inaccurate data can also lead to more dangerous outcomes—of the 120 use of force incidents that DOJ reviewed, 60 percent involved individuals whom officers perceived to be in an altered mental state. Reliable data can help officers construct well-informed responses to calls involving an individual who had previously been flagged as having a mental health or other disability, including potentially employing the Mental Health Unit and homelessness services. This data is also imperative to SPD's ability to accurately review trends in use of force incidents involving these vulnerable communities. Given these issues, SPD should establish clear operational procedures for the entry of key data elements like disability and homelessness flags.

2. Recommendation: SPD should regularly audit its critical data.

DOJ noted some inconsistencies in the way that key data elements are input, which decreases data quality and could make it unreliable. A review of use of force incident data, for example, found inconsistent reporting of the underlying alleged offense. Sometimes, SPD reported the underlying offense as merely “felony.” Other times, SPD reported the offense with the penal code section number or the offense name. This lack of standardization makes it difficult for SPD to effectively analyze the underlying offenses that most commonly lead to or are associated with use of force incidents.

Many law enforcement agencies across the state and country conduct audits of their crime data to ensure accuracy. For instance, the Philadelphia Police Department has a unit that routinely and randomly audits crime reports. A computer program generates the list of reports weighted to focus on problematic crime categories for monthly audits. Any discrepancy or error is returned to the unit that generated the report for corrections and routed through the appropriate chain of command to ensure managers and supervisors are aware of data problems. This type of audit could help identify inconsistencies in SPD's key data elements that inform officers' decision-making, tactics, and strategies.

SPD should identify the critical data it collects regarding core officer and operational performance and conduct regular audits to ensure the accuracy and timeliness of the data. This assessment will leave SPD well positioned to make informed decisions with regard to its policies, procedures, and data collection instruments to ensure that they are thorough, comprehensive, and standardized. Based on the audits, SPD should review operational definitions, procedures, and policies governing data entry. If the audit reveals problems with data quality or integrity, SPD should consider implementing additional edits and logic checks. Strategic use of data and logic edits are necessary in automated systems to ensure the accuracy of key or significant data points.

3. Recommendation: SPD should consider collecting additional data points regarding mental health and homelessness related incidents.

SPD provided DOJ with the reports it produced related to mental health and homelessness related incidents. These reports primarily track the time, date, and location of mental health and homelessness related calls. The data SPD currently collects regarding location and time of call may be helpful in making resource allocation determinations and crafting crisis intervention strategies. However, SPD should consider collecting additional information that can provide more context to this data. As an example, pursuant to a U.S. Department of Justice consent decree, the New Orleans Police Department uses crisis intervention forms that collect information regarding the subject's age, veteran status, any injuries, and the outcome of the incident.¹²² Collecting this information can reveal trends in interactions with these populations, and in turn, inform strategies of how to better serve the community in collaboration with relevant government agencies and organizations.

4. Recommendation: SPD should assess the usefulness of its regular reports and establish a feedback mechanism to increase their effectiveness.

DOJ observed that the Crime Analysis Unit produces approximately 45 types of reports on a weekly, monthly, and as-needed basis. As noted above, reports are generally aggregate counts of crime, crime maps, lists of calls-for-service, and requested data analysis.

However, it is not clear that the Crime Analysis Unit understands how, or whether, the reports are being used to drive decisions, tactics, and deployment. There does not appear to be a feedback mechanism for officers, chiefs, and/or captains to inform the unit about what analytical products are actually useful to them. Without a feedback mechanism, analysts would not know if their products are being used or how to make them more useful. The Crime Analysis Unit should conduct a review of the 45 reports it regularly produces to determine if any are superfluous and establish a feedback mechanism to improve the reports that are being used.

5. Recommendation: SPD should ensure that officers receive proper training in data systems and provide refresher courses for experienced officers.

It is crucial that the officers who input data and utilize it to make decisions know how to quickly and easily access SPD's data systems in the station and in the field. Currently, SPD provides recent academy graduates with 40 hours of training on computer systems. This training includes a California Law Enforcement Telecommunication System (CLETS) course and a test administered by the Records Division. Officers must take CLETS training every two years and must affirm they understand the guidelines for use of CLETS data and the penalties for

¹²² New Orleans Police Dept., 2017 Crisis Intervention Team Annual Report (2017). Available at <https://nola.gov/getattachment/NOPD/NOPD-Consent-Decree/2017-CIT.pdf/> (as of June 18, 2020).

inappropriate use. Any other maintenance training on data systems is handled on an as-needed basis.

Despite SPD's provision of basic computer system training for all officers, many rank-and-file officers indicated that officer knowledge and ability to access and use data systems vary widely. Some become experts in certain data systems that they regularly use, while others with a lack of exposure to certain systems may benefit from refresher courses. SPD should develop and provide the necessary training to officers to access and effectively utilize key databases. The officers and supervisors DOJ interviewed suggested offering in-service training about access and use of SPD's databases, and providing courses designed for officers with two or more years of service.

Training opportunities for experienced officers are increasingly important as SPD introduces new technology and data systems. For example, SPD recently upgraded all patrol cars with 4G cellular network and internet access. This welcome advancement allows officers in the field to use a range of data systems they previously could not access in their cars through mobile data terminals. Officers should also be trained on these new ways to access key data in the field.

6. Recommendation: SPD should streamline the Crime Analysis Unit, Criminal Intelligence Unit, and Real Time Crime Center.

The Crime Analysis Unit falls under Support Services, which is part of the Office of Specialized Services. The Criminal Intelligence Unit is part of Internal Affairs and Professional Standards and falls within the command of the Office of the Chief. The Real Time Crime Center (RTCC) reports to a third command, Detectives, which is part of the Office of Investigations. While all of these units are dedicated to the collection, analysis, and sharing of data and information about crime, offenders, and cases, each of these units operates independent of the others which likely results in lost information and missed opportunities to understand, investigate, and prevent crime.

SPD should develop an integrated analysis model that combines crime analysis and criminal intelligence. Processes and procedures need to be developed so information is shared across these units in a streamlined method and in real-time. Placing Crime Analysis, Criminal Intelligence, and the RTCC under the same command and at the same location would allow more opportunity for cross-disciplinary exchanges of information between them.

SPD should also provide the training, tools, and support necessary for crime analysts to move from counting and mapping crimes and listing places and people to conducting more in-depth analysis.

7. Recommendation: SPD should create a Technology Advisory Council comprised of police personnel, technologists, lawyers, researchers, and community representatives to advise the Chief on the purchase, implementation, and use of technology and data.

New technology often outpaces governing laws, regulations, and policies. Law enforcement agencies find themselves needing to balance demands for public safety with individual privacy, expert advice with community concerns about civil liberties, and the need to reduce crime with the goal of increasing public trust. To ensure that technology does not endanger community trust, “its implementation must be built on a defined policy framework and with its purposes and goals clearly delineated.”¹²³ A digital trust framework moves the discussion of data and technology beyond the traditional risk concerns of security, privacy and compliance with laws and regulations.¹²⁴ Law enforcement executives also need to think through the digital ethics associated with adopting a new technology and using data in new ways.

Data ethics is a set of principles that govern conduct related to data collection, integrity, security and use. Digital trust is created when data and digital ethics are combined to guide policy decisions on technology and its use. This digital trust occurs when the public has faith that the agency is protecting and securing the technology and the data it is collecting, and is using it in an ethical manner. Building digital trust is an important component of establishing trust and legitimacy within the community that an agency serves. In fact, these efforts are intertwined.

To build digital trust and commitment to digital ethics, SPD should establish a Technology Advisory Council (TAC) comprised of police personnel, technologists, lawyers, researchers, and community representatives who advise the Chief on the purchase, implementation, and use of technology and data. TAC and SPD should work together to do the following:

- TAC should develop a code of digital ethics or standards to guide SPD in the purchase, implementation, and use of technology and data systems.
- With TAC, SPD should inventory its existing technology and its use to assess existing technology against the code of digital ethics.
- TAC should assist SPD in applying the code of digital ethics whenever SPD is considering purchasing and deploying new technology.
- SPD, with TAC’s assistance, should develop means to ensure vendors, contractors and employees comply with the code of digital ethics.

¹²³ President’s Task Force on 21st Century Policing, *supra*, note 117.

¹²⁴ See generally, Joyce et al., Bur. of J. Assistance Exec. Sess. on Police Leadership, The Future is Here and We Are Already Late: Leadership Challenges with Emerging Police Technology (2017). Available at <http://bjaleader.org/pdfs/029FutureHereAlreadyLate.pdf>.

DOJ notes that the City of Sacramento’s Community Police Review Commission may already provide this type of advice. The Community Police Review Commission members are appointed by the mayor and confirmed by the city council to oversee SPD’s policies and procedures. The Commission provides recommendations to the city council and the mayor on bias-free policing and the implementation, evaluation, and sustainability of efforts intended to strengthen community-police relations.¹²⁵

8. Recommendation: In adopting new technology, SPD should analyze how it could affect different racial and ethnic groups, consider conducting a formal cost-benefit analysis, and solicit public input.

To the extent that SPD adopts processes that include automated decision systems or data algorithms for decision making (also known as predictive policing), it should analyze how such systems may affect different racial and ethnic groups.¹²⁶ This is important because predictive policing technology may affect how a police department allocates resources and personnel and—depending on the data and algorithms employed—may cause disparities in how a police department enforces the law and lead to an increased risk of incidents of force.

SPD should also consider conducting a formal cost-benefit analysis of any technology it is contemplating adopting, weighing the aggregate benefits of adoption against negative effects. The cost-benefit analysis should make specific determinations about the relative benefits and drawbacks of implementing specific technologies before they are adopted by SPD. The cost-benefit analysis should also consider whether the adoption of technology could exacerbate disproportionate policing of communities of color and other subgroups. Additionally, notifying the public of the purchase and use of technology, and soliciting public input on it are key components for transparency. The U.S. Department of Justice’s Consent Decree with the Baltimore Police Department (BPD), for example, requires the BPD to engage with the community when contemplating the procurement and use of new technology systems:

When acquiring any new type of equipment or technology that is used in enforcement activities or oversight of such activities, including records management systems, computers and mobile data terminals, service weapons and less-lethal weapons, and surveillance or tracking equipment, BPD shall timely disclose to the public on its website or disclose to any civilian oversight entity agreed upon by the Parties: (1) the type of new equipment or technology sought; and (2) BPD’s intended use of the equipment. BPD shall make these disclosures prior to deploying the equipment or technology. The

¹²⁵ *Sacramento Community Police Commission Archived Meetings*, City of Sacramento. Available at http://sacramento.granicus.com/viewpublisher.php?view_id=46 (as of June 18, 2020).

¹²⁶ Hecht-Felella, Legal Fellow, Liberty & National Security Program, Brennan Center for Justice, Testimony of the Brennan Center for Justice before the New York City Council Committee on Technology on Oversight of Local Law 49 & Intros. 1447 and 1806 (hereafter N.Y. City Council) (Jan. 22, 2020). Available at <https://tinyurl.com/BrennanCenterTestimony>.

disclosure requirement shall not apply when BPD is merely purchasing an additional quantity of an existing technology, such as additional patrol vehicles.

BPD currently has a draft policy out for public comment that complies with the above provisions.¹²⁷

SPD used a similar process in implementing its body-worn camera initiative, in that SPD posted the selection process and draft policy, and solicited public input. SPD should continue this practice of informing and involving the public whenever it is considering purchasing and implementing new technology or software. The information made public should include a description of how SPD intends to use the new product and have a process in place for a formal public comment period, which could be conducted via SPD's website.

To further public trust and transparency, SPD should consider maintaining a public, updated list of the technologies it currently uses and provide simple descriptions of how these systems work.¹²⁸ SPD should also update the data-based reports it currently has available to the public, such as the use of force reports, to ensure they are current.

9. Recommendation: SPD should ensure that there are operational policies that govern its RTCC and PODs.

SPD does not have general orders regarding its use of PODs or its Real Time Crime Center (RTCC). SPD has over 80 PODs that record video of several intersections in Sacramento.¹²⁹ SPD's RTCC receives data and video footage from the PODs, license plate readers, City Department of Transportation cameras, and various exterior and interior cameras throughout Sacramento. SPD staff use the RTCC to monitor events, locations, and situations in real time. The systems that feed into the RTCC have the potential to raise privacy and constitutional concerns, especially as SPD introduces new and emerging surveillance technologies. Moreover, if this technology is used improperly, it has the potential to lead to increased surveillance and law enforcement activity in areas perceived as being high crime, which could result in disparate enforcement between racial and ethnic groups. As already noted, increased police activity can lead to an increased risk of force.

Operating policies are essential in ensuring that officers and analysts appropriately use technology. Clear policies, procedures, training, and supervision can mitigate the potential for violating individual rights and disparate treatment of racial and ethnic groups. Without an operating policy, SPD "cannot set a standard for responsible use of this technology," is unable to consistently or effectively identify misconduct, and cannot "assure the public with credibility

¹²⁷ Baltimore Police Dept., Policy 606: Enforcement Technology & Equipment Procurement Disclosure (Submitted Draft, Aug. 5, 2019). Available at <https://tinyurl.com/BaltimorePDTechnology>.

¹²⁸ N.Y. City Council, *supra*, note 126.

¹²⁹ Luca, *Sacramento Police to Add 24 'PODs' by End of Year*, ABC 10 (Apr. 5, 2019). Available at <https://tinyurl.com/ABCSacPD>.

that the technology will be used only in a responsible way.”¹³⁰ Accordingly, SPD should adopt a general order and/or a standard operating procedure to control access and the use of data systems and technology feeding into the RTCC and conduct routine audits to ensure compliance.

¹³⁰ Crim. Justice Policy Program, Harvard Law School, and Stanford Crim. Justice Center, Stanford Law School, *Emerging Police Technology: A Policy Toolkit* (2020) Community: Operating Policies, p. 26. Available at <https://tinyurl.com/StanfordToolkit>.