

## OIR – 2018 – Recommendations – Responses

### **Recommendation 1:**

**BPD should specifically instruct supervisors reviewing Taser uses of force, to focus on the length and number of deployments and any extended deployment beyond five seconds or with more than two separate applications should be referred to the CIRB team for immediate review.**

- The Department reviews all Taser deployments during the CIRB process; each Taser deployment/activation is evaluated and reconciled with the Department's Taser policy. Additionally, the Training Supervisor completes a Taser download/analysis of each Taser activation and provides a report that codifies the Taser event, time, cartridge information, duration (in seconds), temperature and battery life. The Taser Report is included in the Use of Force Investigation package and is discussed in detail during the supervisory and CIRB review process. Any anomaly associated with the Taser device and/or deployment is addressed directly either by the officers' immediate supervisor/Watch Commander and/or Training Supervisor.

### **Recommendation 2:**

**When BPD reviews Taser uses of force, it should focus on the specific restrictions for deployment of the weapon and ensure that sufficient fact-gathering during the investigative phase is achieved to address such issues, and that the analysis addresses those restrictions.**

- Agreed – however, the Department believes this recommendation is achieved during the Use of Force Investigation and the subsequent review processes; specifically, supervisory/Watch Commander review, the respective Commanding Officers' review of the incident and the formal review CIRB process. During the CIRB process, the circumstances of the incident are analyzed/discussed to determine if any policy violations have occurred and the force used meets the threshold established in Graham versus Connor.

**Recommendation 3:**

**BPD should closely examine each encounter preceding a use of force and determine whether there were times during the conversation where disengagement may have been the preferred option.**

- **Agreed – during CIRB sessions, CIRB will continue to conduct a critical review of the circumstances preceding the use of force to determine if would have been more appropriate to disengage from the subject before a use of force incident occurs.**

**Recommendation 4:**

**When examining critical incidents, BPD should review the specific tactics of any rescue or first aid operation with an eye toward self-examination and improvement.**

- **The Department understands OIR’s recommendation – however in a high risk unfolding crisis the rescuing of a subject(s) requires immediate movement/relocation from a deadly threat. The movement of a subject from a threat to a safe location must be swift and can be impaired by the size of the subject – size of the officers – number of officers – distance of the move – status of the threat while ensuring that there is appropriate cover so that the movement of the subject does not place the subject and/or officers in additional peril. Moreover, after any high risk intervention, the involved personnel participate in a debrief of the incident to identify areas of improvement, training and/or equipment recommendations. The Department will take heed to OIR’s recommendation moving forward.**

**Recommendation 5:**

**BPD should inform its first-level supervisors of their primary role as incident commanders and the importance of delegating tactical operations to officers when resources allow.**

- **During high risk interventions it is not uncommon for the roles and physical positions of officers/supervisors to change as the circumstances**

and environment change. A supervisor may become a covering officer, carry a ballistic shield and/or shoulder weapon or may be directly involved in the rescue effort. In this case, it was appropriate for the supervisor to assist with the rescue of the subject while covering officers (with a shield) to provide some protection during the movement of the suspect. During fluid/dynamic high risk incidents, officers/supervisors are trained to be flexible and interchangeable with their respective physical roles/positions depending on the dynamics of the circumstances, environment, and suspect behavior

**Recommendation 6:**

**BPD should consider alternatives to the current “one-month block” sampling model (e.g., a bi-annual and shorter window) that would potentially reach more participants without increasing workload.**

- Moving forward - The Department recommends that OIR select the dates of the email audit to be conducted for a calendar year. The dates that OIR selects in that calendar year will be part of the annual email audit.

**Recommendation 7:**

**The City should consider providing OIR Group with smaller samples from different months as a way of freshening the audit process for senior BPD management.**

- Moving forward - The Department recommends that OIR select those dates/samplings for the Command Staff’s email audit; the Command Staff’s email audit will coincide with the Department-wide annual email audit.

**Recommendation 8:**

**The Department should limit its use of the “Exonerated” finding for those allegations in which factual evidence is not in dispute, the allegation as made**

**does not constitute a violation of policy, and BPD management has no concerns about aspects of the officer’s handling of the interaction.**

- **During the review of investigative facts, if the outcome of a personnel investigation is categorized as Exonerated, the Department will conduct another detailed review/analysis to ensure that the Exonerated category is the proper disposition; if not, the appropriate disposition will be applied. Moreover, the Department is presently reviewing the definitions of all disciplinary actions/outcomes to ensure that the definitions/categories are consistent with law enforcement’s best practices.**

**Recommendation 9:**

**The Department should remain vigilant with regard to the timely completion of cases by regularly attending to all aspects of the relevant chronology. These include an emphasis on identifying and relying upon the earliest possible “start date” when calculating the statutory period for potential discipline.**

- **Agreed - the Department will identify the investigative “start date” that is required by statute – this recommendation will be an organizational priority once an internal investigation has been initiated. It should be noted that the Department has not had an out-of-statue IA since July of 2015.**

**Recommendation 10:**

**The Department should review its recent records of discipline for sustained allegations of misconduct to ensure consistency and sufficiency in its consequences.**

- **The Department does an annual audit of all of their IA’s involving high utilizers to determine if there is a pattern/trend of misconduct. Additionally, during the administrative review of any sustained**

**allegation, disciplinary consistency is the centerpiece of the review process. It should be noted that the review process involves the following: investigating supervisor, respective Commanding Officer, Deputy Chief, Internal Affairs Bureau personnel, Chief of Police, and “City Discipline” when applicable. The review process is layered to ensure that there is consistency in the findings and that any sustained penalty is appropriate and consistent with the Department’s disciplinary process.**

**Recommendation 11:**

**Burbank should continue to routinely evaluate claims against the Department through the prism of administrative review, and should conduct additional investigation into potential misconduct or other performance issues as needed.**

- **The Department receives a copy of all claims that are submitted/filed. The Department’s Audit Supervisor is the repository of the claim processes and that supervisor evaluates each claim to determine if administrative action is required: that is, the initiation of a Personnel Complaint and/or Administrative Review – if one has not already been initiated. The Chief of Police and Deputy Chief are also involved in that review process which is another safeguard that all claims are evaluated for any allegations of potential misconduct/policy violations.**

**Recommendation 12:**

**BPD should regularly evaluate/audit the qualifications and eligibility status of its reserve officers.**

- **Agreed – the Department will implement an annual audit of the Department’s Reserve Officer Program to ensure that all of the Department’s Reserve Officers are in compliance with all Department and POST training standards. Moreover, the Commanding Officer of the Detective Bureau is the Reserve Officer program manager who attends all Reserve Officer meetings for oversight and Departmental representation.**

**Recommendation 13:**

**BPD should ensure that misconduct allegations are addressed with appropriate rigor and concern for risk management in dealing with these “at will” members of the agency.**

- **Agreed – the Department will continue to maintain the same high standards it has for their Reserve Officers as they do for their full-time officers.**

**Recommendation 14:**

**BPD should standardize its own recent good work and look for ways to apply an objective and multi-part test (such as the one created by the federal Department of Justice) to the facts in cases involving racial profiling/biased policing allegations.**

- **Agreed – the Department will continue to evaluate an officers’ historical information as it relates to any potential racial biases (fact check) during alleged racial profiling/bias allegations and continue to reference the Department of Justice’s “A Resource Guide on Racial Profiling Data Collection Systems” when investigating these serious allegations.**

**Recommendation 15:**

**BPD should remain vigilant about maintaining its own high standards for the force review process, particularly with regard to effectively addressing allegations of misconduct by subjects against involved officers.**

- **Agreed – the Department will continue to remain vigilant during the review of all force investigations. The Department will appropriately address/reconcile any allegations of misconduct during that review. This particular recommendation will be discussed during Department-wide supervisory training to ensure Department vigilance is maintained.**

**Recommendation 16:**

**BPD should continue to prioritize the timely resolution of force cases in the interest of providing officers with the most useful possible critiques.**

- **The Department makes a strong effort to have a timely resolution of force cases and provide the CIRB outcome to the involved officers. However, there are instances where the investigation is impeded due to various investigative components; specifically, waiting on/depending on third parties for production of video/audio footage – interviewing witnesses, collecting other evidentiary items for a complete investigation. Additionally, the use of force investigative review process involves the investigating supervisor, a reviewing Watch Commander who ultimately submits the use of force investigation to their respective Commanding Officer. The layered review process may result in requests for additional investigative follow-up and information that could delay the force investigation’s submission for review by CIRB. Commonly referred to as an “investigative kick-up” which is necessary to ensure that a comprehensive use of force investigation has been conducted/completed.**

**Recommendation 17:**

**The Department should continue to regularly assess the use of the De Minimis force protocol to ensure that it is not over-used, particularly with the broadening of the definition to include pain compliance measures.**

- **Agreed – the Department will continue to audit and evaluate incidents of De Minimis force. Additionally, the Department will continue to provide annual use of force training and incorporate the use/criteria associated with De Minimis force incidents to ensure that there is compliance with Department policy.**

**Recommendation 18:**

**When force is used on a handcuffed person, BPD should expressly acknowledge in its force analysis the specific limitations in its policy for using force in that situation and whether sufficient circumstances existed under that policy to support the officers' actions.**

- **Agreed – part of the CIRB process is to examine all force incidents and during circumstances where a handcuffed person is the subject of force – CIRB will review the circumstances that led up to the force intervention and evaluate the level of force used for policy compliance/implications.**

**Recommendation 19:**

**BPD should implement an upgraded and more realistic pursuit training program.**

- **Agreed – however, it should be noted that the Department had two pursuits during this past evaluation period. During the review/critique of those pursuits the decision to initiate a pursuit was critically evaluated for policy compliance. Also noteworthy, was that in both pursuits, over-driving was not a factor and the officers' driving behavior was also critically evaluated.**

**The Department's quest to pursue and implement realistic/upgraded pursuit training was conducted during this evaluation period. The Department spent time and resources looking for viable and realistic pursuit training. During the Department's research to find upgraded/realistic pursuit training, the outcome has been disappointing. The cost associated with real-world, scenario-based pursuit training is extremely expensive. Additionally, the Department has interviewed vendors, reviewed four different products that appeared to be a viable training option; however, all of those products fell short of the Department's expectations in addition to falling short of critical decision making as it relates to initiating a pursuit.**



**But, this recommendation will continue to be an organizational priority moving forward and the Department will continue to create training vignettes that provide realistic pursuit training.**

**Recommendation 20:**

**BPD should track evidence of the success or failure of the new pursuit training program and, based on that data, set a date certain for deciding if the pursuit policy needs revision.**

- **Agreed – when contemporary pursuit training is implemented, the Department will evaluate each pursuit and reconcile the circumstances/outcome of the pursuit to determine if more training is required and/or the pursuit policy needs any revisions.**

**Recommendation 21:**

**BPD should continue its efforts to assign the initial pursuit review/critique to a sergeant who was not involved with the incident.**

- **Agreed – when staffing allows – the Department will ensure that a non-involved supervisor conducts the Pursuit Investigation. Any major pursuit incident the Department will consider calling in additional supervisors to conduct the pursuit investigation.**