



REVIEW OF THE ELKHART, INDIANA POLICE DEPARTMENT

Use of Force, Internal Affairs/Disciplinary Processes,
and Agency Culture

December 2019

Contents

INTRODUCTION	1
The Review Team	2
SECTION I. USE-OF-FORCE POLICY REVIEW	5
Overview: Use-of-Force Policies Within EPD	8
Overall Policy Organization	8
Policy 300: Specific Provisions and Recommendations	9
300.1.1 Definitions	9
300.3 Use of Force	10
300.4.1 Shooting at or from Moving Vehicles	12
300.5 Reporting the Use of Force	12
300.6 Medical Considerations.....	13
300.7 Supervisor Responsibilities	13
Multiple Review Boards Are Overlapping and Should be Consolidated.....	14
Policy 302 Handcuffing and Restraints	15
Policy 303 Control Devices.....	15
303.4.2 Firearms Instructor Responsibilities	15
Policy 304 Conducted Energy Device	15
304.5.1 Application of the Taser Device	16
304.5.2 Special Deployment Considerations	16
304.5.4 Multiple Applications of the Taser Device	16
304.7 Medical Treatment.....	16
305 Officer-Involved Shootings and Deaths	17
305.9.2 Tactical Debriefing (Officer-Involved Shootings and Deaths).....	17
Policy 346 Pepperball Launching System.....	18
SECTION II. USE-OF-FORCE INVESTIGATIONS AND DOCUMENTATION	19
Methodology.....	19
Use-of-Force Reports by Year	19
Subject Demographics	20
Gender	20
Age	21
Race.....	22
Ethnicity	22

Time and Place	24
Force Used	26
Documentation Issues.....	26
Officers Involved	27
Force options	28
RMS/Documentation Issues.....	28
Level of Force	28
Injuries	30
Officer Injuries.....	30
Subject Injuries.....	30
Subject State of Mind Factors.....	31
RMS Issues	31
Subject State of Mind: Analysis.....	32
Charges filed Against Subjects	33
Other Documentation Issues	35
Vague and non-descriptive phrases.....	35
Supervisor Review.....	36
SECTION III: REVIEW OF USE-OF-FORCE TRAINING	38
PERF's Integrating Communications, Assessment, And Tactics Training Guide	38
SECTION IV. REVIEW OF COMPLAINTS AGAINST EPD PERSONNEL AND DISCIPLINARY PROCESS.....	40
Complaint Reception and Investigative Process.....	40
Findings	40
Recommended Complaint Reception and Investigative Process	44
Review of Complaint Data	47
Complaint Intake.....	47
Complaint Nature.....	48
Complaint Handling.....	49
Complaints by Complainant Demographics.....	51
Officers Involved	53
Officer Experience.....	53
Disposition Type.....	54
Length of Investigation	56
Review of Internal Affairs Case Files.....	56

Report Structure	56
Dispositions	57
Disciplinary Process.....	58
Progressive Discipline	58
SECTION V. VEHICLE PURSUITS	60
Methodology.....	60
Findings	60
Time and Place	60
Officers Involved	62
Reason for Pursuits	62
Damage and Injuries	63
Dynamics	64
Termination of Pursuits	70
SECTION VI: ACCOUNTABILITY	71
Feedback from Community Members	71
External Agency Oversight	74
Early Intervention System (EIS).....	75
Inspections	76
Quality Assurance	76
Accountability to the Community.....	77
Officer Performance Measures.....	78
SECTION VII: CULTURE ASSESSMENT	79
SECTION VIII: OTHER FINDINGS AND RECOMMENDATIONS	81
Department Administration.....	81
Promotions.....	81
CONCLUSION.....	83
Appendix A: Critical Decision-Making Model.....	85
Elements of the CDM	85
CDM Core	85
Appendix B: Sample Discipline Matrix – City of Madison Police Department.....	86
Appendix C: Sample Discipline Matrix – Austin Police Department.....	94

INTRODUCTION

In 2018, a series of events led Elkhart Mayor Tim Neese to take various actions in relation to the Elkhart Police Department. An in-custody beating of a suspect early that year, and the events that followed, led to the termination of the former police chief and the appointment of a new chief by the Mayor; the creation of a board to review all instances of police use of force; and the selection of a team consisting of Deborah J. Daniels, of the law firm of Krieg DeVault LLP, based in Indianapolis, and the Police Executive Research Forum (PERF) of Washington, D.C., to conduct an independent assessment of certain aspects of the operation of the Elkhart Police Department (EPD). Information about the organizations and the team participants appears below.

Specifically, the Mayor asked the Krieg DeVault/PERF team to conduct a review of the EPD's policies, practices and accountability measures relating to the use of force; the history, policy and practices relating to complaints against the police and disciplinary policies and practices; and an assessment of the culture of the EPD. During the course of the review, a series of EPD vehicle pursuits resulting in injury or, in two cases, death, led the Mayor to request as well a review of EPD policy and training in relation to police pursuit of suspects. The Mayor's actions were taken in the interest of identifying the need for specific policy and practice changes within the EPD and improving EPD's relationship with all members of the Elkhart community.

The analysis conducted by the team was based on information gathered from City officials, EPD and the community at large, including these sources:

1. A review of EPD policies in the referenced areas and related policies
2. A review of documentation of internal EPD use-of-force reports and investigations over a three-year period ending December 31, 2018
3. A review of complaints against police officers and disciplinary actions over a three-year period ending December 31, 2018
4. A review of use-of-force training conducted by EPD
5. A review of hiring and promotion policies and practices within EPD
6. A review of the EPD policy on pursuits and data relating to pursuits occurring during the three-year period ending December 31, 2018
7. On-site interviews with police leadership, from the Chief and Assistant Chief and the command staff through the rank of sergeant and including the Professional Standards Division, which reviews allegations of police misconduct
8. Interviews with the Mayor and other city officials, including members of the City Council, the Board of Public Safety and the Police Merit Commission, formed by the Mayor after his 2015 election

9. Interviews/focus groups involving various members of the local community, including business representatives, representatives of the African-American community, and representatives of the Hispanic community

The team met with both the Mayor and the Chief at an interim point to discuss preliminary findings and recommendations, in order that the EPD might begin implementing solutions to perceived issues prior to the issuance of a final report. Based on public comment in 2018 and early 2019, it was clear to the team and to the Mayor that there was a strong desire on the part of the community to see changes implemented at the earliest opportunity for the benefit of the police department, the community at large, and police-community relations.

This report represents the findings and recommendations of the Krieg DeVault/PERF team, and reflects improvements initiated by EPD during the course of the review as well as those improvements still awaiting implementation.

[The Review Team](#)

From Krieg DeVault LLP

Deborah J. Daniels, Esq. is a partner with Krieg DeVault LLP, a law firm based in Indianapolis but with an office in Mishawaka as well as other locations in and outside Indiana. Daniels is a former Chief Counsel for the Marion County, Indiana Prosecuting Attorney's Office, as well as a former United States Attorney and United States Assistant Attorney General, with significant experience in criminal and civil investigations and public safety. Her work has included responsibilities at the U.S. Department of Justice directly related to the nation's response to the September 11th attack on the U.S., data and communications interoperability, and the nation's ability to detect, prevent and respond to future terrorist acts. She also focused in her role as U.S. Assistant Attorney General on police operations and training matters, and the conduct of multi-department investigations. She has served on multiple panels to assist mayors of Indianapolis with the selection of both police chiefs and public safety directors.

Daniels provides counsel to the firm's public and private sector clients in matters affecting public safety, leveraging of federal and state resources, federal and state regulatory compliance and internal investigations. She assists the firm's clients in interacting with agencies of local, state and federal government, including both the executive and legislative branches at all levels, and advises clients in both the public and private sectors on compliance and public policy matters.

Daniels holds a bachelor of arts degree from DePauw University, and a juris doctor (J.D.) degree from McKinney School of Law, Indiana University.

From the Police Executive Research Forum

Chuck Wexler is Executive Director of the Police Executive Research Forum (PERF), an organization of law enforcement officials and others dedicated to increasing professionalism in policing.

Wexler currently is leading a project to reform police agencies' policies, training, and equipment regarding police use of force, based on the core principle that the sanctity of human life is at the heart

of the mission of policing. As part of this effort, PERF has released a set of Guiding Principles on Use of Force, as well as a Training Guide to help police agencies put the principles into effect.

Wexler also has led PERF efforts to document the increasing role of police agencies in reducing opioid overdose deaths in the United States, the use of body-worn cameras by police officers, cybercrime investigations, improving the police response to sexual assault crimes, and other issues.

In addition to national policy and practice studies, Wexler has directed projects with local police departments in Minneapolis, Chicago, Kansas City, St. Louis, and Los Angeles, as well as internationally in Jamaica, Tanzania, the Middle East, Scotland, Northern Ireland and London to develop violence reduction strategies and improve the delivery of police services.

Prior to joining PERF, Wexler worked as an assistant to the nation's first Director of the Office of National Drug Control Policy. A native of Boston, Wexler held a number of positions in the Boston Police Department, where he was instrumental in the development and management of the Community Disorders Unit, which earned a reputation for prosecuting and preventing racially motivated crime.

Wexler earned an undergraduate degree from Boston University and a Ph.D. in urban studies and planning from the Massachusetts Institute of Technology (MIT). In 2006 he was awarded an OBE (Order of the British Empire) for his work with British and American police agencies.

Tom Wilson joined PERF in February 2013 and serves as Director of PERF's Center for Applied Research and Management, previously serving as Deputy Director of the Management Services Division. Prior to this, Wilson served for almost 24 years with the Anne Arundel County, MD Police Department, retiring as a Major. Anne Arundel County, MD is located in the Baltimore / Washington metropolitan area and surrounds the state capital city of Annapolis. The department is a full service C.A.L.E.A accredited police agency with roughly 1,000 sworn and civilian employees serving over 550,000 residents. As Major, Mr. Wilson served in command of both the Patrol Services and Administrative Services Bureaus.

His prior commands included the Anne Arundel County Police Department's four district police stations; the community relations division; the county 911 center (PSAP); homeland security and intelligence; departmental technology and integration (including RMS, CAD, ARS and MDTs); development and oversight of the departmental budget; strategic planning; the training academy; police personnel; accreditation; the crime lab; evidence collection; departmental fleet; and the county animal control section.

As Captain, Wilson was appointed to serve almost three years as the Anne Arundel County Director of Emergency Management. His responsibilities included: developing and maintaining a comprehensive emergency management program for all hazards, design of the county's Emergency Operations Plan, compliance with the National Incident Management System, implementation of the Incident Command System into all aspects of county government, and oversight of federal and state homeland security funding.

Throughout his career, Wilson has served in almost all aspects of policing, including patrol, training, narcotics and major investigations. He has received extensive training in a variety of law enforcement, crisis management and emergency management matters.

Wilson holds a Master of Science in Administration from Central Michigan University and a Bachelor's in Criminal Justice from the University of Maryland, College Park. He is a graduate of PERF's Senior Management Institute for Police, the Maryland Police and Corrections Commission / Federal Bureau of Investigation "Maryland Excellence in Leadership" program and the Federal Bureau of Investigation's Law Enforcement Executive Development Association.

Terrance W. Gainer

Terrance W. Gainer is a long-time law enforcement professional. He served with the Chicago Police Department, as deputy Inspector General of Illinois, deputy director of the Illinois State Police and in the United States Department of Transportation before being appointed director of the Illinois State Police in March 1991.

Gainer went on to serve as Executive Assistant Police Chief, second in command of the Metropolitan Police Department for the District of Columbia, under Chief Charles H. Ramsey, beginning in March 1998, and as Chief of the United States Capitol Police from June 2002 to March 2006. In addition, Gainer served as the Director of Emergency Preparedness for The Nonprofit Roundtable of Greater Washington. During his time with the Nonprofit Roundtable of Greater Washington, Gainer worked extensively with non-profit organizations (such as hospitals, schools and charities) to help them formulate a coordinated response for emergency preparedness in the Washington, DC metropolitan region. In 2006, Gainer was appointed by the then-Senate Majority Leader as the Sergeant at Arms of the United States Senate.

Currently, Gainer resides in Chicago, Illinois and serves as an independent consultant, often working in collaboration with the Police Executive Research Forum (PERF). He holds a bachelor's degree in sociology from St. Benedict's College; a master of science degree in management and public service from DePaul University; and a juris doctor (J.D.) degree from DePaul University. He is a decorated veteran who served in the Viet Nam war, and served as a captain in the U.S. Navy Reserve until 2000.

Rachael Arietti

Rachael Arietti joined PERF in 2015 and serves as a Research Associate in PERF's Center for Applied Research and Management. At PERF, Rachael conducts management services reviews to include assessments of agencies' use of force, officer-involved shootings, and internal affairs processes. She also manages a variety of research and technical assistance projects focusing on issues including improving the law enforcement response to sexual assault and domestic violence, as well as many of PERF's gun violence-related projects. She holds a Master's degree in Sociology (concentration: crime/deviance) and a Bachelor's degree in Sociology and Psychology from Virginia Tech.

SECTION I. USE-OF-FORCE POLICY REVIEW

The project team reviewed the Elkhart Police Department's (EPD) policies related to use of force for thoroughness and compliance with nationally recognized progressive policing practices. The purpose of the policy review was to determine whether EPD's use-of-force policies are aligned with progressive practices and national standards regarding use of force. We also examined whether EPD's policies are sufficient to give officers a clear understanding of the rules, expectations, and guidelines regarding use of force.

This section presents recommendations for how EPD can continue to improve its use-of-force policies, as well as specific recommendations for strengthening language in current policies. Policies and recommendations are presented below in sequential order based on the policy number and not in any priority order.

Specifically, the team reviewed the following policies:

- Policy 300 Use of Force
- Policy 301 Chief's Review Board / Policy 345 Use of Force Review Board
- Policy 302 Handcuffing and Restraints
- Policy 303 Control Devices
- Policy 304 Conducted Energy Device
- Policy 305 Officer-Involved Shootings and Deaths
- Policy 307 Pursuits
- Policy 346 Pepperball Launching System

Rethinking Use-Of-Force Policies, Practices and Tactics PERF's Recent Analysis of Use of Force Issues Nationally

The team's review of EPD's use-of-force policies, training, and practices took place amid a national debate about police use of force that has been going on for several years. In the wake of high-profile lethal force incidents that have occurred across the United States in recent years, it is important for police departments to strengthen their relationships with the community and to ensure that the sanctity of human life is at the heart of everything they do. This means examining use-of-force policies, practices, and training to make sure that they reflect the core ideal of preserving the lives of everyone – including officers and the people they are charged with serving and protecting.

PERF's recent work regarding use of force has focused largely on police encounters with persons who are behaving erratically or dangerously due to a mental illness, a developmental disability, or another condition that prevents them from understanding and obeying orders from law enforcement. PERF also has focused on incidents involving individuals who either are unarmed, or are armed only with an edged

weapon, a rock, or other weapon other than a firearm. In 30 percent of the 990 fatal officer-involved shootings across the country in 2015, the subjects either were unarmed or were armed with a weapon other than a firearm.¹

It is these types of incidents where PERF believes there is the greatest potential for de-escalation and increasing the safety of everyone involved, including officers, by teaching officers to “slow the situation down,” to bring additional resources to the scene, and to use communications skills and operational safety tactics to resolve the incident with minimal use of force. In situations where criminal suspects are brandishing firearms, officers have fewer options for how they can respond, and use of lethal force is more likely.

The remainder of this section discusses the key concepts at the center of PERF’s recent use-of-force work, which is detailed in two reports: *Re-Engineering Training on Police Use of Force*,² and *Guiding Principles on Use of Force*.³ These concepts are woven throughout this report and provide the basis for many of the recommendations.

Re-Engineering Training on Police Use of Force

PERF held a national conference in May 2015 to explore new approaches to policies and training on police use of force. That conference, held in Washington, D.C., brought together nearly 300 police chiefs and other law enforcement executives, federal government officials, and academic experts.

PERF’s report, *Re-Engineering Training on Police Use of Force*, documents findings from the conference as well as from a 2015 PERF survey of law enforcement agencies that examined the use-of-force training provided to officers in the academy and in-service. The survey found that use-of-force training in many agencies was primarily focused on firearms and defensive tactics training, while training on topics such as de-escalation, communication, and crisis intervention was far less common. Participants at the meeting agreed that agencies should supplement firearms and defensive tactics training with additional training on under-represented topics, and that training on de-escalation and crisis intervention should be integrated into a comprehensive training program, rather than “siloed” from other subjects.

PERF followed up with a number of smaller regional meetings to further develop the concepts in the “Re-Engineering” report, with an eye toward developing policy concepts and training principles that

¹ Kindy, Kimberly and Kennedy Elliott. 2015. “2015 Police Shootings Investigation.” *Washington Post*, December 26, 2015. <https://www.washingtonpost.com/graphics/national/police-shootings-year-end/>.

² Police Executive Research Forum. 2015. *Re-Engineering Training on Police Use of Force*. <http://www.policeforum.org/assets/reengineeringtraining1.pdf>

³ Police Executive Research Forum. 2016. *Guiding Principles on Use of Force*. <http://www.policeforum.org/assets/guidingprinciples1.pdf>

police agencies can adopt. In January 2016, PERF again convened a national meeting in Washington, in which nearly 200 police chiefs and other executives, federal agency representatives, mental health experts, academics, and others evaluated a draft of 30 “Guiding Principles on Use of Force” developed by PERF.

Guiding Principles on Use of Force

The Guiding Principles, which were released in final form in March 2016,⁴ are designed to give officers more specific guidance on use-of-force policy, training, tactics, equipment, and information needs. Some of the principles are general in nature (e.g., “Adopt de-escalation as formal agency policy”), while others are more specific (e.g., “Duty to intervene: Officers need to prevent other officers from using excessive force.”).

PERF’s Guiding Principles report also presents a new tool to support decision-making in the field, including during critical incidents. This tool, known as the **Critical Decision-Making Model (CDM)**, is based largely on the National Decision Model that has been used effectively in the UK for several years. The CDM is designed to teach officers how to think critically about many types of complex situations, including incidents that could end with a use of force. Essentially, during a critical incident, officers using the CDM continually ask themselves questions about the nature of the incident, any threats and risks, their powers and authority to take various actions, and their options. After taking action, they assess whether the action had the desired effect, and if necessary, begin the decision-making process again. In a situation involving a potential use of force, officers trained in the Critical Decision-Making Model ask themselves questions such as, “Do I need to take immediate action, or do I have time to slow this situation down? What is the threat? What information do I need about the person I am dealing with? How can I establish rapport with this person and ask him questions that will help me assess what is happening and the risks? Do I need additional resources at the scene, such as specialized equipment, other police units, a supervisor, or officers specially trained in mental health issues? What could go wrong here, and how serious would the harm be? How can I mitigate potential threats?”

While this process may sound complicated, officers who have been trained in the CDM have said that as they use it every day in various situations, it becomes second-nature. They compare it to driving a car. When a person is first learning to drive, every action, such as activating a turn signal or keeping the car centered in a lane, requires thought. But after a short time, drivers perform many of the tasks of driving without consciously thinking about them. Similarly, officers who use the CDM become accustomed to constantly evaluating situations and considering a wide array of potential responses.

⁴ Ibid.

Overview: Use-of-Force Policies Within EPD

Overall, the team found the department's use-of-force policy to be strong. Below, we have made recommendations to further strengthen policy to bring it in line with nationally recognized best practices.

Overall Policy Organization

Policy 300 is the EPD's primary use-of-force policy; but EPD's directives regarding use of force are segregated into several different policies. For example, the department's use-of-force definitions and philosophy are in a standalone policy, while policies governing force tools are outlined in separate documents. Additionally, policy 300 *appears* to be primarily focused on lethal force, but still has some elements of less-lethal force (such as Use of Force to Affect an Arrest, Pain Compliance, Use of Force to Seize Evidence).

EPD should consider consolidating the current use-of-force policies to ensure clarity. When issues pertaining to use-of-force are broken into numerous policies, there is a chance that revisions may not be applied uniformly and that the department's use-of-force philosophy may not be clear to officers. EPD would be better served if issues related to use-of-force were combined under a single policy. This would also make updating the policy easier as all of the critical components would be located in the same document.

Recommendation: *EPD should combine related use-of-force policies under a single directive. This will make it easier for officers to find pertinent information on use-of force and will create a more holistic approach to force within the department. This comprehensive policy should include the agency's philosophy on use of force, clear guidelines around lethal and less-lethal force options, and guidelines on the accountability and reporting measures related to use of force.*

Ideally, policy should be organized in a manner such as the following:

- Purpose and Scope
- Definitions
- Lethal Force
- Less-Lethal Force
 - Less-Lethal Tools
- Documentation/Reporting
- Supervisor Responsibilities
- Medical Considerations

Specifically, the following policies should be merged:

- Policy 300 Use of Force
- Policy 302 Handcuffing and Restraints
- Policy 303 Control Devices
- Policy 304 Conducted Energy Device
- Policy 346 Pepperball Launching System

Policy 300: Specific Provisions and Recommendations

300.1.1 Definitions

EPD's current use-of-force policy includes the following four definitions:

- **Deadly Force:** as used in this policy is defined as force which reasonably creates substantial risk of causing death or serious bodily injury.
- **Serious Bodily Injury:** bodily injury that creates a substantial risk of death or that causes, serious permanent disfigurement, unconsciousness, extreme pain or permanent or protracted loss or impairment of the function of a bodily member or organ.
- **Force:** The application of physical techniques or tactics, chemical agents or weapons to another person. It is not a use of force when a person allows him/herself to be searched, escorted, handcuffed or restrained.
- **Imminent:** Ready to take place; impending. Note that imminent does not mean immediate or instantaneous.

EPD's current policy does not include definitions for several key terms, including proportionality and de-escalation. These terms reflect concepts that we recommend EPD incorporate into its policy, and they should be clearly defined at the beginning of the policy.

Recommendation: *EPD should replace the current term (and subsequent references) “deadly force” with “lethal force,” and should add a definition for “less-lethal” force for the department’s control devices, Electronic Control Weapons and other less-lethal force options. These terms reflect the fact that while some weapons are designed to be less lethal than firearms, they sometimes do result in death. Related agency policies should also be reviewed to ensure that these new terms are applied consistently in related policies.*

Recommendation: *EPD should add a definition of “Proportionality” to this policy. As explained in PERF’s report on Guiding Principles on Use of Force, the definition should state that proportionality involves officers: (1) using only the level of force necessary to mitigate the threat and safely achieve lawful objectives; (2) considering, if appropriate, alternate force options that are less likely to result in injury but will allow officers to achieve lawful objectives; and (3) considering the appropriateness of officers’ actions. The concept of proportionality does not mean that officers, at the moment they have determined that a particular use of force is necessary and appropriate to mitigate a threat, should stop and consider how their actions will be viewed by others. Rather, officers should begin considering what might be appropriate and proportional as they approach an incident, and they should keep this consideration in their minds as they are assessing the situation and deciding how to respond. Proportionality also considers the nature and severity of the underlying events.⁵*

Recommendation: *EPD should add a definition of “De-escalation” to this section. For example, Seattle Police Department utilizes the following definition of de-escalation: “taking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation. The goal of de-escalation is to gain the voluntary*

⁵ See PERF, *Guiding Principles on Use of Force*, pp. 38-40.
<http://www.policeforum.org/assets/guidingprinciples1.pdf>.

*compliance of subjects, when feasible, and thereby reduce or eliminate the necessity to use physical force”.*⁶

Recommendation: *EPD’s use-of-force policy should emphasize proportionality, the use of distance and cover, tactical repositioning, “slowing down” situations that do not pose an immediate threat, calling for supervisors and other resources, and similar actions and tactics.*⁷ *For example, the Camden County, New Jersey Police Department’s use-of-force policy states that “when force cannot be avoided through de-escalation or other techniques, officers must use no more force than is proportionate to the circumstances...Some of the factors that officers should consider when determining how much force to use include...whether further de-escalation techniques are feasible, including the time available to an officer to make a decision, and whether additional time could be gained through tactical means...”.*⁸

Recommendation: *EPD should remove the following language from the definition of Imminent: “Note that imminent does not mean immediate or instantaneous”. This additional language is confusing and does not add to the definition.*

300.3 Use of Force

This section outlines what the department considers to be reasonable use of force. Specifically, current policy states that:

“The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.”

This section is reflective of *Graham v. Connor*⁹ which establishes a general standard of “objective reasonableness” regarding police use of force. Objective reasonableness represents the legal standard by which police use of force is judged by the courts, and it is critical that any use-of-force policy articulate that standard.

However, though *Graham* outlined broad principles for how the objective reasonableness standard should be applied, the Supreme Court ultimately left it up to individual police agencies to determine how to best incorporate those principles into their own policies, training, and tactics. The Court stated, “Determining whether the force used to effect a particular seizure is ‘reasonable’ under the Fourth Amendment requires a careful balancing of the ‘nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake. ... *Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical*

⁶ Seattle Police Department. 2019. “Use of Force Definitions.” *Seattle Police Department Manual*, September 15, 2019. <https://www.seattle.gov/police-manual/title-8---use-of-force/8050---use-of-force-definitions>

⁷ PERF, *Guiding Principles on Use of Force*, pp. 54-65. <http://www.policeforum.org/assets/guidingprinciples1.pdf>.

⁸ Camden Police Department. 2013. “Use of Force.” January 28, 2013.

<https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5d5c89c2e3bc4c000192f311/1566345667504/CCPD+UOF+Policy+%288.21.19%29+%28FINAL%29.pdf>

⁹ *Graham v. Connor*, 490 U.S. 386 (1989). <http://caselaw.findlaw.com/us-supreme-court/490/386.html>.

application, ... its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” (Emphasis added.)

Graham is the common denominator across the United States; all police agencies must have use-of-force policies that meet *Graham*’s standards. No one except the Supreme Court itself can alter that precedent. However, many police departments have chosen to go *beyond* the bare requirements of *Graham*. For example, many police agencies have detailed policies and training on issues such as shooting at moving vehicles, rules on pursuits, guidelines on the use of Electronic Control Weapons (ECWs), and many other use-of-force issues that are not mentioned in or required by *Graham*.

Furthermore, new concepts in use-of-force policy and practice, such as the “tactical pause,” often reflect expectations of American communities about police use of force, particularly in assessing whether force in any given situation is not only legal, but also is necessary, proportional, and ethical. In this sense, use-of-force policies and practices currently employed by many police agencies seek to go beyond the minimum legal standard established in *Graham*.

In fact, a federal appeals court in 2016 held that professional standards in policing can sometimes become incorporated in new legal standards. (The case, *Armstrong v. the Village of Pinehurst et al.*, involved the use of an Electronic Control Weapon against a mentally ill man. The Fourth Circuit U.S. Court of Appeals cited ECW guidelines produced by PERF and the Justice Department’s COPS Office to reach the conclusion that “immediately tasing a non-criminal, mentally ill individual, who seconds before had been conversational, was not a proportional response.”)¹⁰

Recommendation: EPD should add language to this section stating that force used by officers should be **proportional to the threat**. In assessing whether a response is proportional to the threat being faced, officers should consider the following factors:

- Whether the level of force is necessary to mitigate the threat and safely achieve a lawful objective;
- Whether there is another, less injurious option available that will allow the officer to achieve the same objective as effectively and safely; and
- Whether the officer’s actions will be viewed as appropriate given the severity of the threat and the totality of the circumstances.

300.3 ends with the following sentence: “While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable force.”

Recommendation: EPD should reword this section to emphasize a focus on de-escalation. We recommend a statement that, while there is no requirement to retreat, the department’s expectation is for its officers to process and think through the incident at hand, making use of diffusion/de-escalation tactics whenever possible.

¹⁰ See PERF, *Guiding Principles on Use of Force*, pp. 45. <http://www.policeforum.org/assets/guidingprinciples1.pdf>. Page 18.

300.4.1 Shooting at or from Moving Vehicles

Current policy states that “Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.”

This section can be simplified to state that shooting at vehicles is prohibited. The only exceptions to this policy would be if a subject inside a vehicle is using or threatening lethal force by means other than the vehicle itself or if the vehicle is being used as a weapon of mass destruction.

Recommendation: *EPD should simplify the language in this section to simply state, “Shooting at or from a moving vehicle is prohibited unless someone inside the vehicle is using or threatening lethal force against an officer or another person by means other than the vehicle itself. The only exception to this policy is in an apparent act of terrorism when the vehicle is being used as a weapon of mass destruction.”*

300.5 Reporting the Use of Force

Current policy states that “Any use of force by a member of this department shall be documented promptly, completely and accurately in an appropriate report, depending on the nature of the incident.” The language used in this policy, however, does not state the specific types of force that should be documented.

Recommendation: *EPD should add the following language to Policy 300.5: “Officers will document all uses of force that involve a hand or leg technique; the use of a deadly weapon¹¹, less-lethal weapon, or weapon of opportunity; or any instance where injury is observed or alleged by the subject that is the result of an officer’s use of force. The pointing of a firearm or an Electronic Control Weapon at an individual as a threat of force should be documented in incident reports.”*

300.5.1 indicates the following circumstances in which notification is to be made to a supervisor after a use of force application:

- a) The application caused a visible injury
- b) The application would lead a reasonable officer to conclude that the individual may have experienced more than momentary discomfort
- c) The individual subjected to the force complained of injury or continuing pain
- d) The individual indicates intent to pursue litigation
- e) Any application of the Taser or control device
- f) Any application of a restraint device other than handcuffs, shackles or belly chains
- g) The individual subjected to the force was rendered unconscious
- h) An individual was struck or kicked
- i) An individual alleges any of the above has occurred

¹¹ The use of force in an officer involved shooting will be captured and reviewed as part of the criminal and administrative investigation as outlined in policy 305 Officer Involved Shootings and Deaths

Notification and response can be greatly simplified by stating that supervisors are to immediately respond to any scene: where a weapon (including a firearm, edged weapon, rocks, or other improvised weapons) is reported; where a person experiencing a mental health crisis is reported; or where a dispatcher or other member of the department believes there is potential for significant use of force. This removes the discretion of the officer in terms of notifying a supervisor in the course of an incident at a time when the officer's attention is necessarily on other things. Supervisors will be required to respond to such scenes automatically.

Recommendation: *EPD should simplify notification and response requirements by stating that supervisors are to immediately respond to any scene: where a weapon (including a firearm, edged weapon, rocks, or other improvised weapons) is reported; where a person experiencing a mental health crisis is reported; or where a dispatcher or other member of the department believes there is potential for significant use of force.*

300.6 Medical Considerations

This section outlines the requirements for obtaining medical treatment for individuals following an officer's use of force. While these requirements are comprehensive overall, current policy can be improved by requiring that officers involved in a use-of-force incident have a duty to render first aid until an EMT arrives.

Recommendation: *EPD should add language to this section to require that officers render first aid to individuals after a use-of-force incident until an EMT arrives.*

300.7 Supervisor Responsibilities

This section governs the responsibilities of supervisors after a use-of-force incident. Current policy requirements can be strengthened by requiring supervisors to respond to the scene of all reportable uses of force to conduct the initial investigation, and if possible, to respond to the scene before force is used.

There is a growing recognition in the policing profession that in critical incidents where force may be necessary, supervisors play an important role. If a supervisor can get to the scene prior to force being used, the supervisor can have a stabilizing effect and may prevent the incident from escalating unnecessarily.

At PERF's 2016 meeting on *Guiding Principles on Use of Force*, former San Diego Police Chief William Lansdowne said that in incidents that involved an officer-involved shooting, there was typically about a 15-minute window of time from when the call came in until the first shots were fired. "If you have a system set up within your organization that gets a supervisor to the scene early on, within the 15-minute window, your chance of having an officer-involved shooting ... is reduced by about 80 percent, because they can manage the situation as a team," Chief Lansdowne said.¹² Therefore, the team recommends that supervisors be aware of the types of incidents that can result in force being used – such as calls involving persons with a mental illness, developmental disability, drug addiction, or other condition that is causing them to behave erratically or dangerously – and to respond to those calls.

¹² Police Executive Research Forum, *Guiding Principles on Use of Force*, (Washington, D.C.: Police Executive Research Forum): p. 63.

In situations where a supervisor is unable to arrive at the scene prior to a use of force, it is important that the supervisor respond as soon as possible to begin an investigation at the scene of the incident. While on the scene, it is beneficial for supervisors to utilize the Critical Decision-Making Model (CDM) [see insert on page 7] as they investigate the reported use of force. Doing so will give the supervisors a consistent framework to determine whether the actions taken were appropriate. Having supervisors use the CDM will also help reinforce the concept with officers who can see it being used in a practical situation. It also sets the expectation that officers are to utilize the CDM in their daily work.

Recommendation: *EPD should add language to this section to require that supervisors should respond to the scene of ALL reportable uses of force to conduct the initial investigation. Supervisors should also be dispatched to all incidents where it is anticipated that force might be used.*

Multiple Review Boards Are Overlapping and Should be Consolidated

EPD has several policies that discuss various review boards pertaining to use of force, the duties of which appear to be overlapping. A single review entity, with authority over all serious uses of force, injury, complaints of injury, and other critical police incidents, will provide both clarity and consistency in the official review of such incidents. The various policies and review boards are discussed below.

Policy 301 Chief's Review Board

Policy 301 establishes a Chief's Review Board which is convened when the use of force by an officer results in serious bodily injury or death. The Board also investigates firearms discharges (excluding training or recreational use) by officers. Additionally, the chief may request the review board investigate the circumstances of any use-of-force incident.

Policy 345 Use of Force Review Board

Policy 345 establishes a Use-of-Force Review Board that is mandated to review all police use of force incidents and, per policy, to:

1. Provide oversight of all use-of-force incidents
2. Identify trends related to use of force
3. Identify departmental training needs related to use of force
4. Ensure that all use-of-force incidents fall within department policy and procedure
5. Identify equipment needs related to use of force

Policy 305 Officer-Involved Shootings and Deaths

Per Policy 305, EPD also has a Shooting Review Board consisting of the Assistant Chief of Police, a Captain, Lieutenant, Sergeant, Firearms instructor, and a Corporal.

Given the overlap in the roles and responsibilities in these three policies, the EPD should strongly consider merging the Chief's Review Board, the Use-of-Force Review Board, and the Shooting Review Board into one entity. We recommend this body be named the Critical Incident Review Board (CIRB). CIRB should be tasked with a review/investigation of the following incidents:

- All serious uses of force
- Lethal force

- Less-lethal force with a tool
- Injury
- Complaint of injury
- All in-custody deaths
- Any other critical police incident as directed by the chief of police.

Recommendation: *EPD should merge the Chief’s Review Board, the Use-of-Force Review Board, and the Shooting Review Board into one entity that is responsible for reviewing: all serious uses of force; lethal force; less-lethal force with a tool; injury; complaint of injury; all in-custody deaths; and any other critical police incident as directed by the chief of police.*

Recommendation: *In addition to establishing a CIRB to review serious uses of force, EPD should adopt an additional external oversight mechanism to review serious uses of force. See page 77 for further information.*

Policy 302 Handcuffing and Restraints

No policy issues were identified.

Policy 303 Control Devices

This policy governs the use of certain less-lethal devices, specifically OC spray, baton, tear gas, and kinetic projectiles). Overall, our review finds this policy to be sound, with minimal recommended changes.

303.4.2 Firearms Instructor Responsibilities

This section states that all control devices will be “periodically inspected” by the department’s Firearms Instructor. The frequency of this review should be specified in policy.

Recommendation: *EPD should add language to this section to specify that all control devices are to be inspected by the officer’s supervisor monthly and by the department’s Firearms Instructor on an annual basis.*

Policy 304 Conducted Energy Device

Within EPD’s policies, Electronic Control Weapons (ECWs) are referred to as “conducted energy device” for purposes of the policy’s title, and “Tasers” within policy itself. A uniform term should be used, one that makes it clear that use of the weapon carries a risk of harm.

Recommendation: *EPD should replace all references to “conducted energy device” and “Taser” in this and any related policies with the more descriptive and appropriate term, “Electronic Control Weapon (ECW),” in order to clarify that ECWs are in fact weapons that carry a risk of harming persons.*

304.5.1 Application of the Taser Device

Current policy identifies two circumstances in which use of the ECW is authorized. The first is active resistance, which is a nationally recognized best practice. The second circumstance (subsection (b)) permits use of the ECW when “the subject has demonstrated, by words or action, an intention to be violent or to physically resist, and reasonably appears to present the potential to harm officers, him/herself or others.” The language of subsection (b) is inconsistent with best practice, which would provide that “ECWs should be used only against subjects who are exhibiting active aggression or who are actively resisting in a manner that, in the officer’s judgement, is likely to result in injuries to themselves or others”.¹³ Best practice would also require clarity in policy that ECWs are not to be used against a passive subject.

Recommendation: *EPD should remove subsection (b) from this section. Use of the ECW should only be at the level of active resistance or aggression. EPD should also specifically note in policy that ECWs are not to be used against a passive subject.*

304.5.2 Special Deployment Considerations

This section discusses special considerations (circumstances) in which ECW deployment should generally be avoided (e.g., individuals known to be pregnant). However, the listed considerations do not include flight as a situation in which ECW deployment should be avoided. Further, fleeing should not be the sole justification for using an ECW against a subject.

Recommendation: *EPD should add that fleeing should not be the sole justification for using an ECW against a subject. Personnel should consider the severity of the offense, the subject’s threat level to others, and the risk of serious injury to the subject before deciding to use an ECW on a fleeing subject.*

304.5.4 Multiple Applications of the Taser Device

Due to the risk of injury associated with ECWs, EPD’s policy regarding their use should be precise and in line with best practices. Currently, the policy does not include considerations regarding the length of time subjects are exposed to ECWs.

Recommendation: *EPD should revise deployment procedures to state, “Personnel should use an ECW for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary. Personnel should consider that exposure to the ECW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. Any subsequent application should be independently justifiable, and the higher risk should be weighed against other force options.”*

304.7 Medical Treatment

This section governs medical treatment protocols for individuals exposed to an ECW application. Language is overall satisfactory, but can be strengthened by adding a requirement that all subjects who have been exposed to an ECW application undergo an evaluation by emergency medical responders in

¹³Police Executive Research Forum. 2011. “2011 Electronic Control Weapon Guidelines.” [https://perf.memberclicks.net/assets/docs/Free Online Documents/Use of Force/electronic%20control%20weapon%20guidelines%202011.pdf](https://perf.memberclicks.net/assets/docs/Free%20Online%20Documents/Use%20of%20Force/electronic%20control%20weapon%20guidelines%202011.pdf)

the field or at a medical facility, and that whenever possible, emergency medical personnel should be notified when officers anticipate that an ECW may be deployed against a subject.

Recommendation: *Strengthen language to require that all subjects who have been exposed to ECW application receive a medical evaluation by emergency medical responders in the field or at a medical facility.*

Recommendation: *When possible, emergency medical personnel should be notified when officers respond to calls for service in which they anticipate an ECW may be used against a subject.*

305 Officer-Involved Shootings and Deaths

This policy governs the investigation of officer-involved shootings and deaths. 305.1 Purpose and Scope states that “the purpose of this policy is to establish policy and procedures for the investigation of an incident in which a person is injured or dies as the result of an officer-involved shooting or dies as a result of other action of an officer”.

EPD should also investigate all non-contact shootings to ensure that the officer’s actions were permitted by department policy. Non-contact shootings should be subject to the same stringent investigation protocols as contact shootings, as it is the officer’s *intent* to use deadly force, not marksmanship, that is the reason for the investigation.

Recommendation: *EPD should ensure that it is investigating all non-contact shootings with the same thoroughness as it does with contact shootings to ensure that the officer’s actions were permitted by departmental policy and tactically sound. We recommend that the policy be amended to read as follows: “The purpose of this policy is to establish policy and procedures for the investigation of officer-involved shootings, or incidents in which a person is injured or dies as a result of the action of an officer. This includes cases in which an officer discharges a firearm toward an individual, regardless of whether the individual was injured as a result of the officer-involved shooting. The thorough investigation of an officer-involved shooting is not based on marksmanship, but on the officer’s intent. Therefore, shootings in which no one is injured will be investigated with the same thoroughness as shootings in which someone was injured.”*

305.9.2 Tactical Debriefing (Officer-Involved Shootings and Deaths)

This section of Policy 305 requires that a tactical debriefing should take place post-event to identify if there are training or policy issues that need to be addressed. This is a best policing practice, and can be improved upon by requiring that this debriefing take place no later than 72 hours after the incident. This review should also include any equipment issues that may have occurred. The purpose of this debriefing is to immediately identify issues in training, policy and/or equipment without having to wait until the completion of the official shooting investigation.

Recommendation: *EPD should require that the post-shooting tactical debriefing occur no later than 72 hours after the event, to identify potential issues in training, policy and/or equipment without having to wait until the completion of the official shooting investigation.*

Policy 346 Pepperball Launching System

No policy issues were identified.

SECTION II. USE-OF-FORCE INVESTIGATIONS AND DOCUMENTATION

Methodology

In order to assess EPD's reporting on use of force, the team reviewed a sample of reports from use-of-force incidents that occurred between 2016 and 2018. We exported from EPD's records management system (RMS) a list of 919 use-of-force reports tied to approximately¹⁴ 674 incidents occurring during this time period (there can be more than one use-of-force report associated with a single incident, as each officer that uses force is required to complete a separate use-of-force report). We excluded 34 incidents (37 reports) that the data indicated involved the shooting of animals (mostly deer). This left approximately 640 incidents (882 reports). We then randomly selected 160, or 25% of the incidents, some of which included multiple use-of-force reports, resulting in 219 use-of-force reports for analysis.

Each use-of-force report is comprised of several RMS fields to be completed by the officer, as well as a narrative section, and supplements (in the event that additional officers are involved in the incident). The team considered each of these components as part of its review of the use-of-force reports. Officer involved shootings were not included in this analysis, as they are documented in a separate module of EPD's RMS.

Note: All numbers in this report are rounded to the nearest whole number.

Use-of-Force Reports by Year

Excluding animal-related incidents, there were a total of 882 use-of-force reports completed between 2016 and 2018. The number of reports did not vary dramatically over the three-year period (see Figure 1). As described above, the team examined 219 of these use-of-force reports (representing 160 incidents) as part of its analysis.

¹⁴ There were a few discrepancies (e.g. duplicates of incidents).

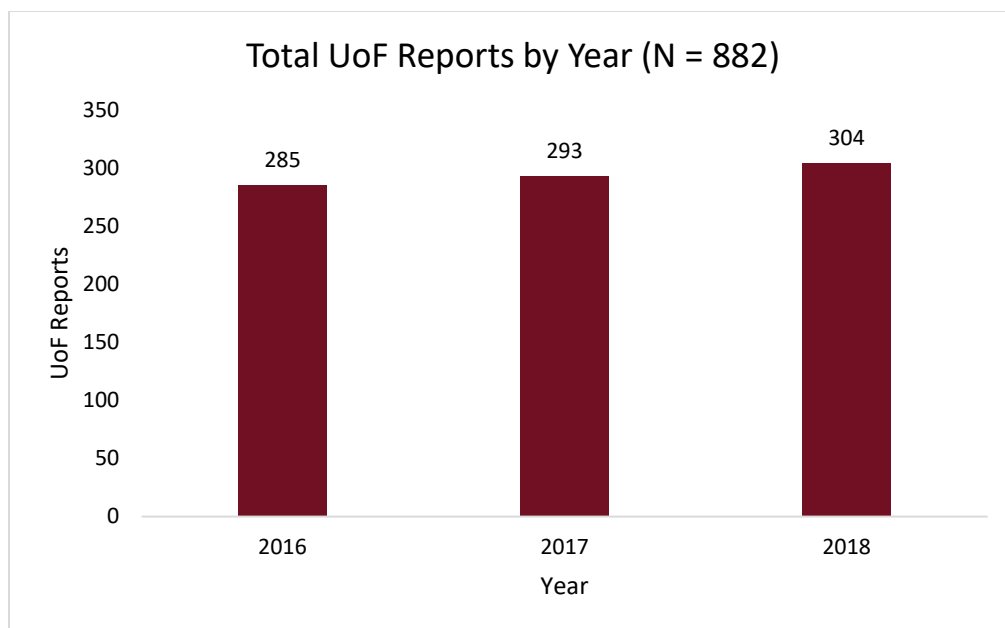


Figure 1.

Subject Demographics

Among the 160 incidents reviewed, we identified 166 individuals who had force used against them.^{15,16} For brevity, they will henceforth be referred to as “subjects.”

Gender

The team obtained subject demographic information directly from EPD’s RMS. Across the three-year period, we found that 83% of subjects were male, with the remaining 17% being female. The distribution did not noticeably vary year-to-year (Figure 2).

¹⁵ Some incidents involved more than one subject.

¹⁶ Two subjects had force used against them in two different incidents. Both subjects are counted twice in all statistics and figures except those related to demographics.

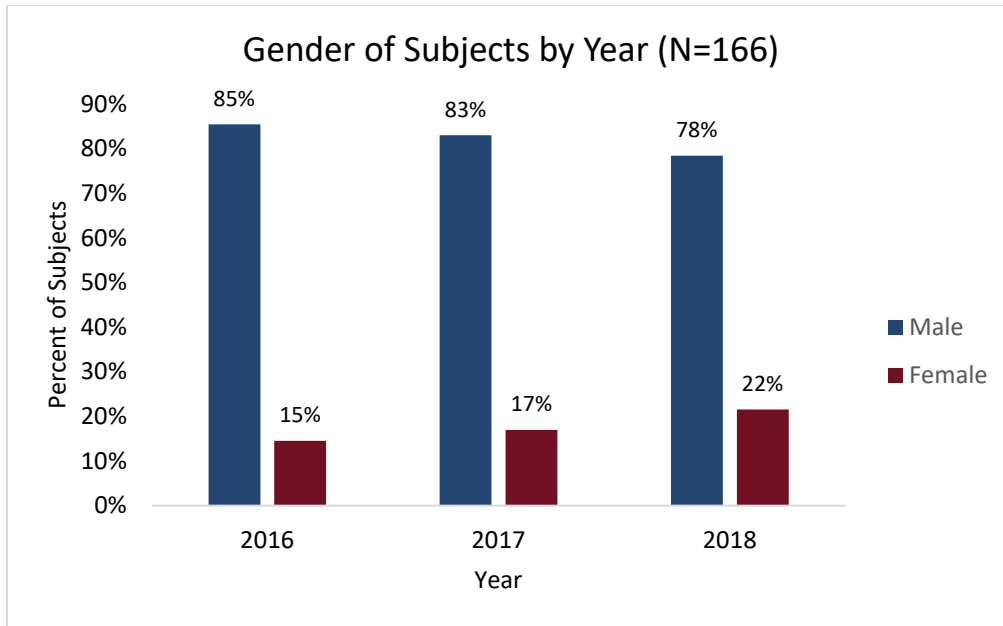


Figure 2.

Age

The majority of subjects were below 31 years old (the mean age was 30 over the three-year period); there was a noticeable drop-off in use of force against people in their forties and above (Figure 3).

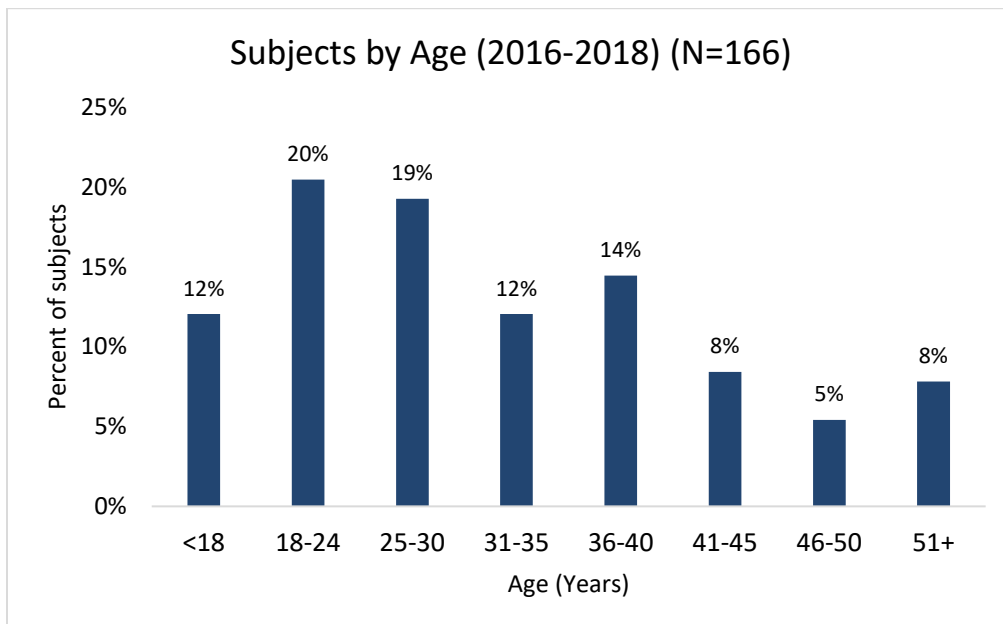


Figure 3.

Race

In terms of race, 58% of subjects were White, 39% were Black, 1% were Asian, and the remaining 1% did not have their race listed, across the three-year period. The race distribution of subjects did not noticeably vary year-to-year (Figure 4).

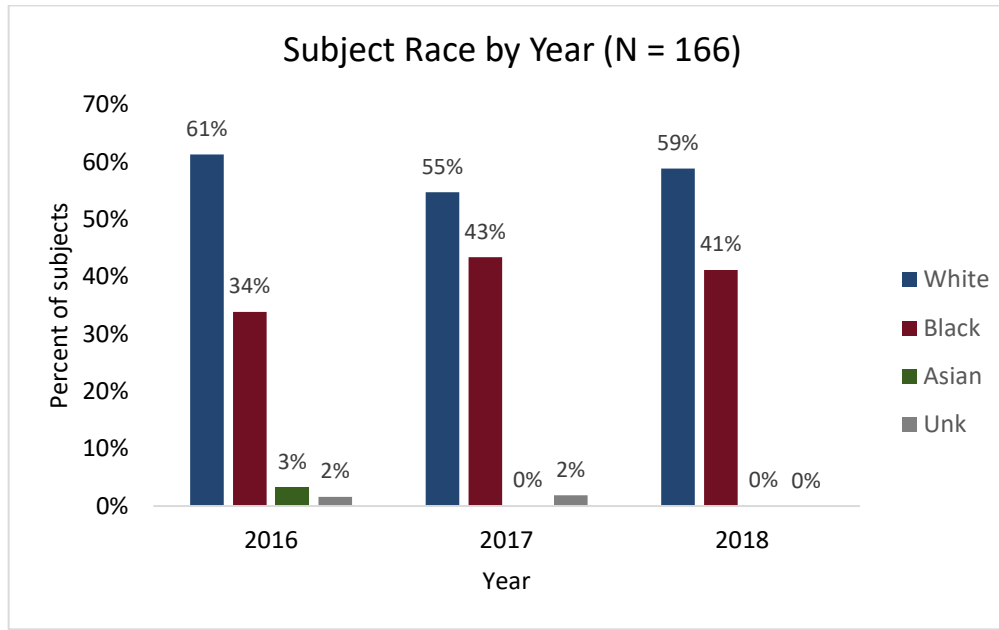


Figure 4.

Ethnicity

In terms of ethnicity, 82% of subjects were not Hispanic, 14% were Hispanic, and the remaining 4% did not have their ethnicity listed. All Hispanic subjects in the sample were White. The distribution did not noticeably vary year-to-year (Figure 5).

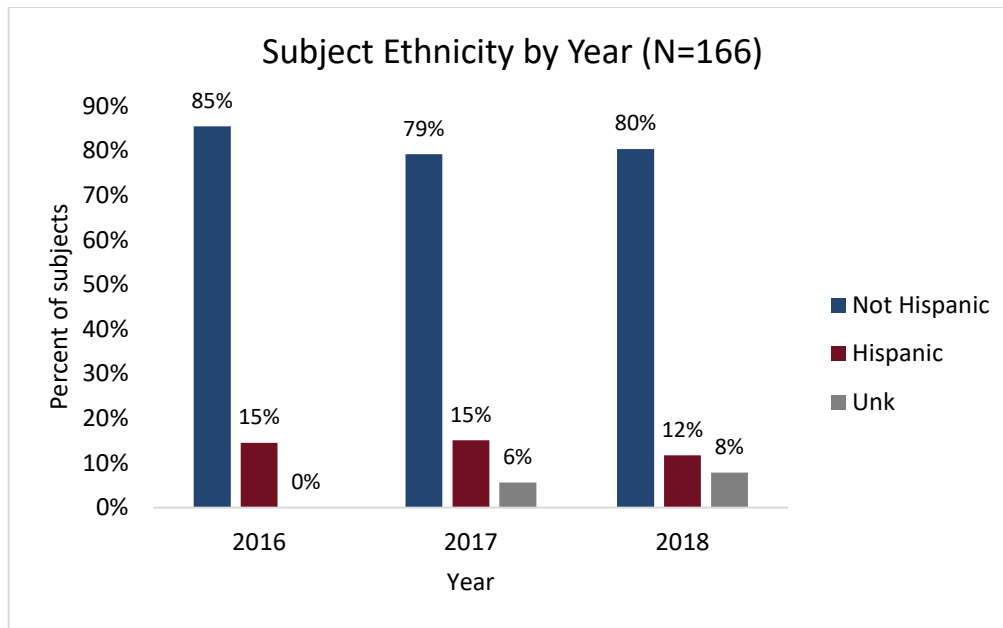


Figure 5.

Based on the available data, the team cannot draw conclusions about any correlation between racial and ethnic characteristics and the likelihood of being the subject of a use-of-force incident, as further analysis would be needed to rule out alternative explanations for racial/ethnic disparity.¹⁷ Previous research has been inconclusive on the causes of racial/ethnic disparities in police contacts with citizens, and various factors may contribute to racial and ethnic disparities in use of force that are not necessarily an indication of bias on the part of officers. Collecting data on additional officer, situational, and subject characteristics would allow for a more comprehensive analysis to identify which factors, above all others, influence use of force.

Recommendation: *To further examine the relationship between subject race/ethnicity and involvement in use-of-force incidents, EPD should compare the distribution of race and ethnicity of persons in use-of-force cases to the racial/ethnic distributions found in other types of police-subject interactions (e.g., calls for service, victimizations, arrests, etc.). EPD should monitor these trends on a regular basis to identify potential training needs.*

Recommendation: *As various factors may contribute to racial and ethnic disparities in use of force data, discrepancies are not necessarily an indication of bias on the part of EPD officers. However, we recommend that EPD implement training on implicit bias and cultural awareness, as it is always beneficial for officers to develop their awareness in these areas.*

See also the suggestion from community members regarding cultural competence and diversity training in Section VI of this report.

¹⁷ See for example, Fridell, Lorie A. (2004). *By the Numbers: A Guide for Analyzing Race Data from Vehicle Stops*. https://www.policeforum.org/assets/docs/Free_Online_Documents/Racially-Biased_Policing/by%20the%20numbers%20-%20a%20guide%20for%20analyzing%20race%20data%20from%20vehicle%20stops%202004.pdf

EPD Action Taken: *PERF has shared this recommendation with the Chief and he has indicated that EPD has recently made efforts to increase awareness of these issues and intends to examine opportunities to provide training in these areas.*

Time and Place

For purposes of patrol, Elkhart is divided into three areas (A, B, C) which are further divided into six zones (Figure 6). Area A is comprised of Zones 1 and 2, Area B is comprised of Zones 3 and 4, and Area C is comprised of Zones 5 and 6.

Zones 1 and 2 stretch from the northern-most parts of Elkhart to the Saint Joseph River. The two zones are divided by Route 19, with Zone 1 being on the west side and Zone 2 being on the east side.

Zone 3 hugs the Saint Joseph River and the railroad tracks to the east and south. Its western border is Nappanese Street. Zone 4 sprawls from the east side of the railroad tracks to the far eastern reaches of the city. Like Zone 3, its northern border is the Saint Joseph River.

The northern border of Zone 5 is the railroad tracks; the Zone continues south to the city limits. Zone 6 is east of Zone 5; the divider is Benham Avenue. The eastern border of Zone 6 is the railroad tracks. Like Zone 5, Zone 6 stretches to the southern city limits.

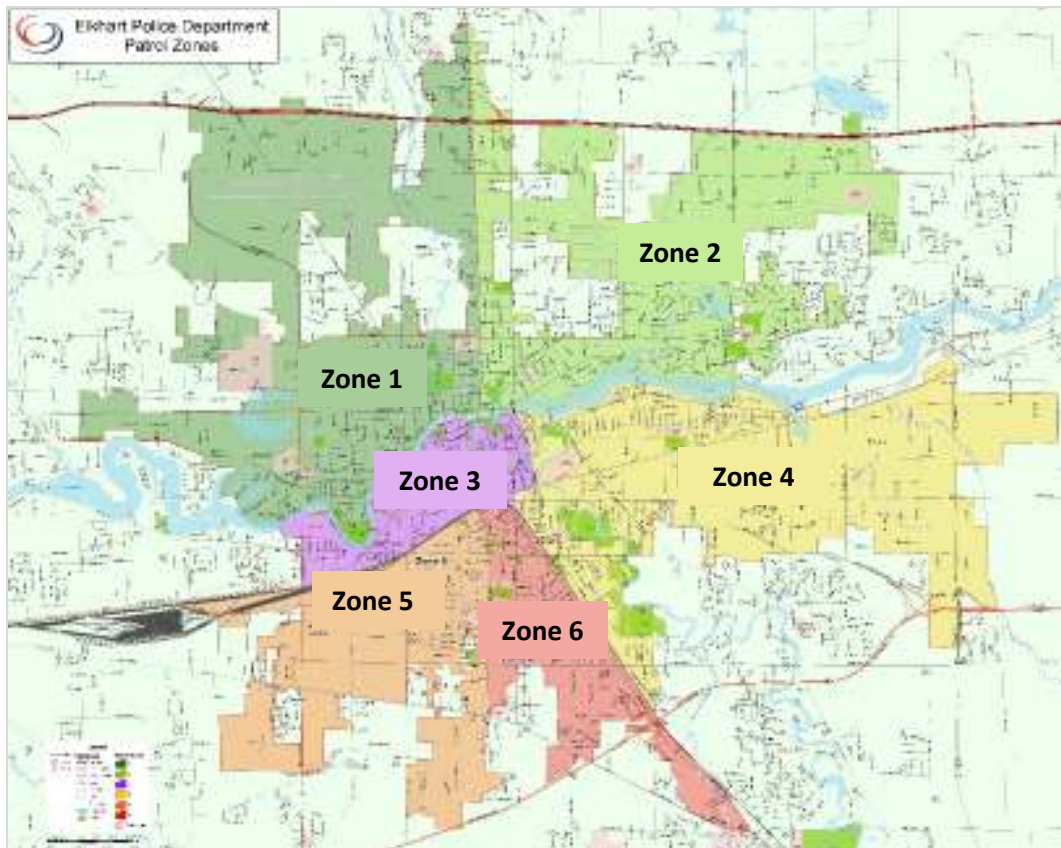


Figure 6.

A higher percentage of use-of-force incidents occurred in Areas A (37%) and B (34%) (Zones 1-4) between 2016 and 2018. Only 24% occurred in Area C (Zones 5 and 6). The remaining 6% of incidents did not have an Area indicated in EPD's RMS data fields (Figure 7).

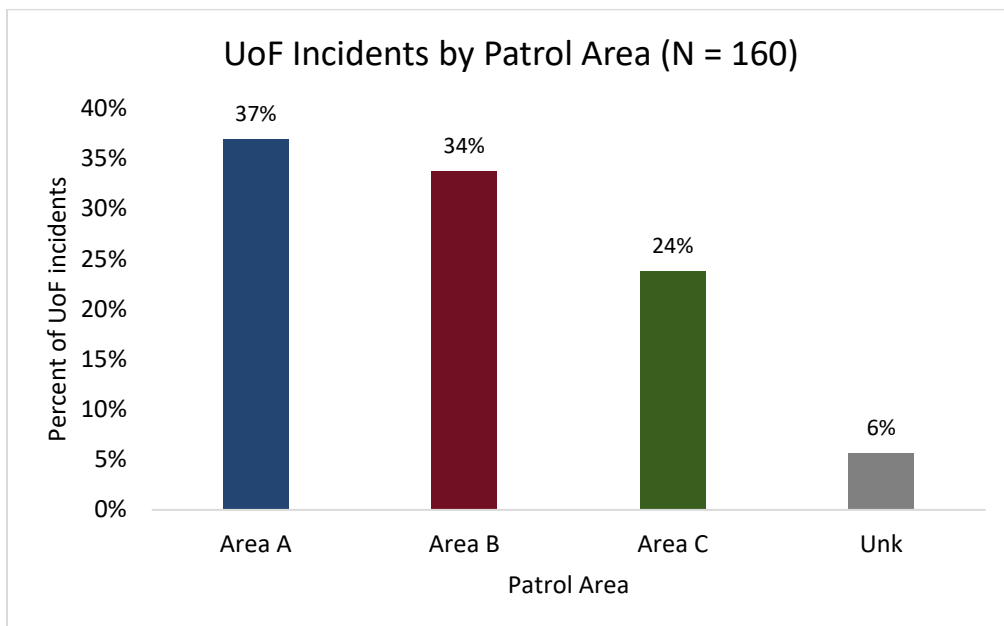


Figure 7.

By drilling down to the zone level, it is clear that use-of-force incidents were not evenly distributed across areas. For example, while both Zones 3 and 4 are located in Area B, 23% of use-of-force incidents between 2016 and 2018 occurred in Zone 3 while only 9% occurred in Zone 4 (Figure 8). The team followed up with EPD to assess whether these trends align with trends in calls for service in these areas, but EPD was unaware of any corresponding trends in calls for service.

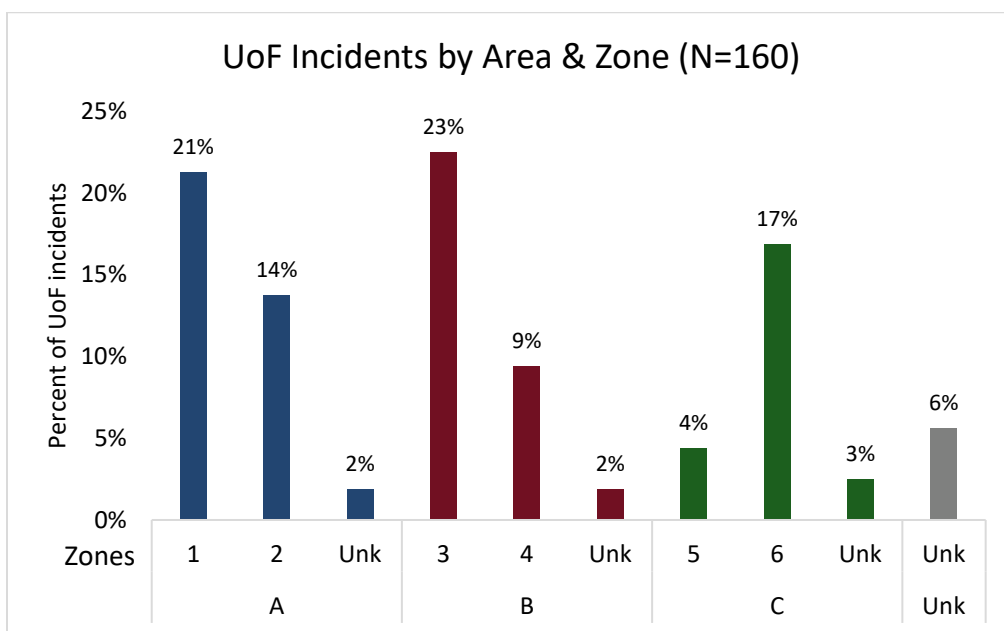


Figure 8.

EPD's patrol division operates in three shifts: Shift 1 (7:00 AM to 3:00 PM), Shift 2 (3:00 PM to 11:00 PM), and Shift 3 (11:00 PM to 7:00 AM). Most (82%) use-of-force incidents occurred during shifts 2 and 3 over the three-year period (Figure 9). This is generally not surprising, as the afternoon shift will typically experience a higher call volume, while the midnight shift will often have more serious types of calls that are more likely to result in a potential use of force.

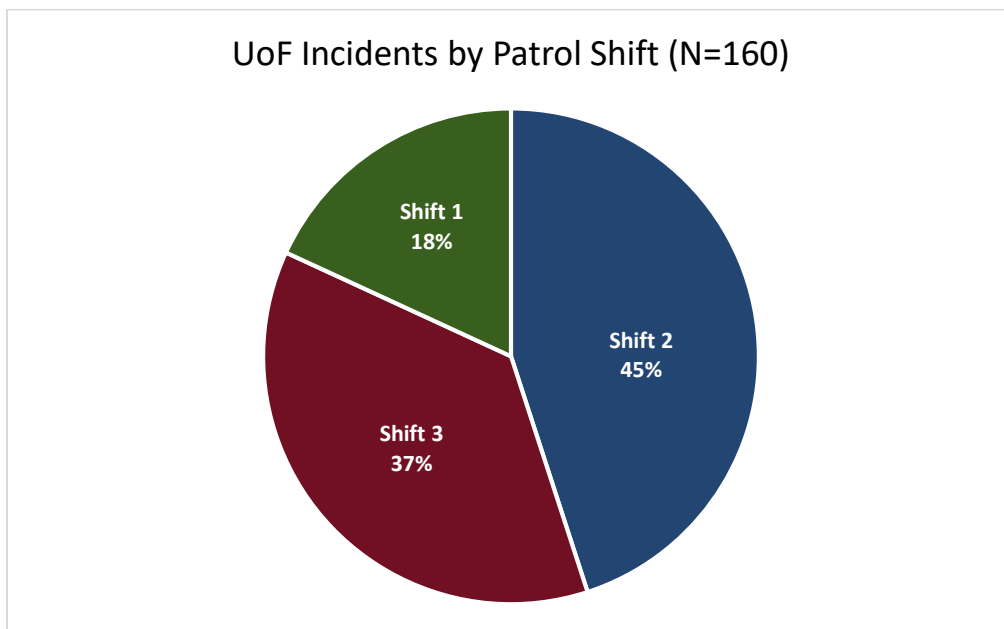


Figure 9. Shift 1 is from 7:00 AM to 3:00 PM. Shift 2 is from 3:00 PM to 11:00 PM. Shift 3 is from 11:00 PM to 7:00 AM.

Force Used

Documentation Issues

In reviewing EPD's use-of-force reports, the team identified several inconsistencies with regard to documentation. EPD policy in effect during the period studied states that "any officer who uses force towards another person shall complete an electronic [Use-of-Force] form" (General Order 6.03-A, effective 5/14/2014)¹⁸. According to interviews with EPD personnel, a use-of-force report is required when an officer:

- Points a firearm at a subject, with the caveat that, in the case of a high-risk/"felony" traffic stop, only one officer is required to complete a use-of-force report¹⁹
- Discharges a firearm towards an animal²⁰
- Uses physical force greater than mere handcuffing in response to resistance

¹⁸ This policy was in effect until March 2019, during the period under review

¹⁹ This was agency practice for documenting use of force between 2016 and 2018. With implementation of the agency's new policy 300, there may be changes in documentation requirements. The team recommends that going forward, the mere display of a firearm should be documented in an incident report, rather than a use of force report (see recommendation on page 12).

²⁰ Discharges towards humans are reported in a separate module and were therefore not included in this analysis.

- Deploys a K-9 for a bite
- Uses a less-lethal tool (e.g. OC spray, ECW, baton, etc.) against a subject

However, we identified cases in which a narrative made reference to more than one officer using force, but only one officer completed a use-of-force report.

We also found several cases where an officer did not use force as defined by EPD but *did* file a use-of-force report. For example, we identified some use-of-force reports in which the highest level of force documented was the mere display of an ECW.

Similarly, in cases in which force was used against two or more subjects by one officer, sometimes one use-of-force report was filed, and sometimes one was completed for each subject. In its current configuration, EPD's RMS does not allow for the documentation of multiple subjects in a single report. When only one subject is captured in the RMS data fields, it results in an undercount of subjects and related information.

Recommendation: *EPD should ensure that policy sets out clear requirements for reporting the use of force, including which incidents require documentation (see recommendation on page 12), and who is required to complete a use-of-force report. All officers and supervisors should receive training on these reporting requirements to ensure a thorough understanding.*

Recommendation: *EPD should ensure that a separate use-of-force report is completed for each subject that force was used on. This will ensure that appropriate information is collected regarding each subject. In addition, EPD should ensure that a separate use-of-force report is completed by each officer using force.*

Officers Involved

The team identified 62 officers who reported using force at least once between 2016 and 2018. We found that certain officers used force much more frequently than others. The top three officers were responsible for 21% of uses of force, the top six officers were responsible for 33% of uses of force, and the top twelve officers were responsible for 50% of uses of force over the three-year period. While this indicates that a relatively small number of officers were responsible for a disproportionate amount of force, it is important to note that officers who use force more often than their peers are not necessarily acting inappropriately, as a variety of factors beyond the control of officers can influence the frequency with which they use force. These include, but are not limited to, shift, area, and division. For example, an officer who works patrol in a busy area at night will probably use force more frequently than an officer who works the day shift in a slower area. Nonetheless, it is important to analyze the data carefully in order to determine whether certain officers are using force excessively.

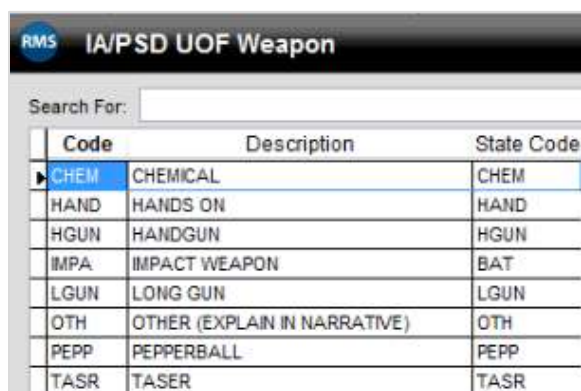
Recommendation: *EPD should periodically analyze RMS data to identify officers who initiate a disproportionate number of use-of-force incidents. These officers' conduct should be scrutinized and appropriate action (e.g. counseling, training, formal discipline) should be taken, if necessary. EPD could also consider the use of an Early Intervention System (EIS) to identify these trends (see page 75-76 for further information).*

Force options

RMS/Documentation Issues

We found that officers were inconsistent in their reports as to how they listed the force options they used. For example, we identified several cases in which officers indicated in RMS fields that they used an ECW, but wrote in their narrative that they either merely displayed an ECW or that another involved officer used an ECW. While the team recognizes the importance of tracking incidents in which a firearm or ECW is displayed as a threat of force, in general, the display of an ECW or firearm need not be documented in a use-of-force report and may instead be documented in incident reports. This will allow for proper tracking by supervisors to determine whether an officer is using the threat of force inappropriately.

In addition, it appears that EPD currently documents the discharge of a firearm toward an animal as a use of force. These incidents may also be documented in incident reports going forward. Figure 10 below displays the force options that officers are currently able to select in EPD's RMS.



Code	Description	State Code
CHEM	CHEMICAL	CHEM
HAND	HANDS ON	HAND
HGUN	HANDGUN	HGUN
IMPA	IMPACT WEAPON	BAT
LGUN	LONG GUN	LGUN
OTH	OTHER (EXPLAIN IN NARRATIVE)	OTH
PEPP	PEPPERBALL	PEPP
TASR	TASER	TASR

Figure 10. The “weapon” selection menu in EPD's RMS.

Recommendation: EPD should clearly define these use-of-force options and train officers on their meaning and proper use/entry. For example, training should clarify that officers should not ‘select’ ECW in their use-of-force report solely because another officer on scene used one. Similarly, officers should not ‘select’ baton if they merely used it to break a window.

Recommendation: Going forward, EPD should document the display of a firearm, as well as the discharge of a firearm toward an animal, in incident reports rather than use-of-force reports. EPD should ensure that all officers receive training on these new reporting requirements.

Level of Force

From reading the narratives associated with the use-of-force reports, the team identified the highest, or most serious, force option used by any officer against any subject in a given incident. From, highest to lowest, these are:

- Use of an ECW,
- use of a K-9,

- use of another less-lethal weapon (e.g., baton, OC spray),
- hand techniques (both hard and soft), and
- display of a firearm.

In 37% of incidents, hand techniques, including strikes, takedowns, tackles, and control holds were the highest force option used. In 35% of incidents, we found that the display (or threat) of a firearm was the highest force option used. In 27% of incidents, ECWs were the highest force option used. In a mere 2% of incidents, K-9s and less-lethal weapons other than ECWs (e.g. OC spray) were the highest force option used.²¹ (Figure 11).

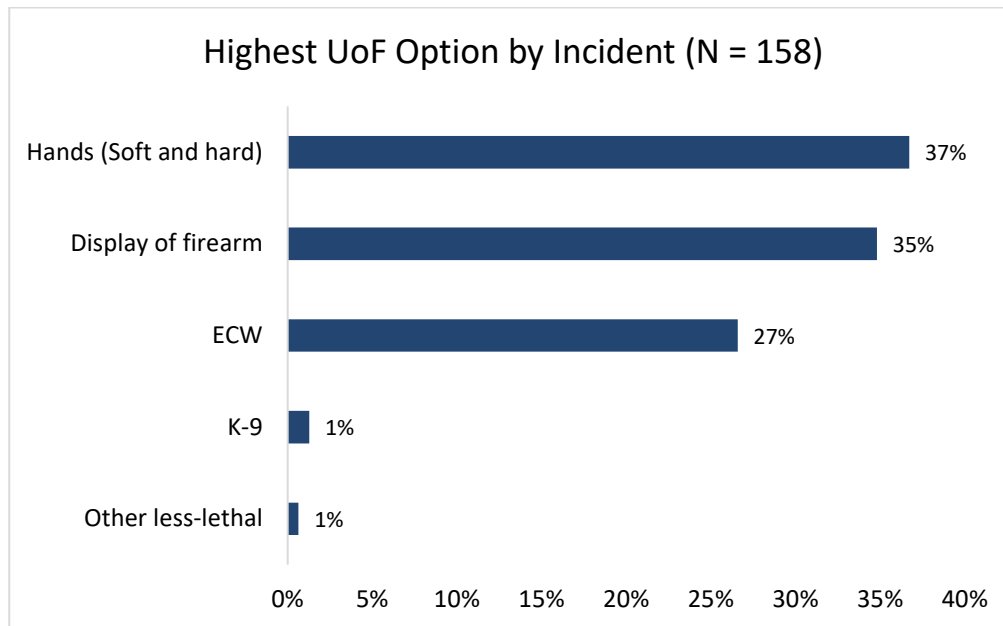


Figure 11.

These data suggest that EPD appears to be relying heavily on the use of ECWs as a less-lethal option. However, according to recent data collected by the Los Angeles Police Department, ECWs were only effective in a little over half of deployments between 2016 and 2018.²² Since ECWs are not always highly effective, EPD should ensure officers are receiving proper training on other less-lethal options, including OC spray, baton, and Pepperball.

Recommendation: *EPD should ensure that defensive tactics training properly educates officers about the effectiveness of ECWs, and adequately prepares them for the use of other less-lethal options including OC spray, baton, and Pepperball. Ensuring the use of all available less-lethal options is important to ensure an effective response.*

With regard to ECW deployments, we identified 13 incidents in which ECWs were deployed against fleeing subjects. Because using an ECW on a fleeing subject is more likely to cause injury to the subject

²¹ 2 incidents were excluded from this analysis, as the highest reported level of force was the display of an ECW.

²² Los Angeles Police Department. 2018. "Executive Summary: Use of Force Year-End Review 2018."

<http://assets.lapdonline.org/assets/2018-uof-yr-end-ex-rpt.pdf>

because of their forward momentum, it is important that officers have sufficient justification to do so. As previously indicated, fleeing should not be the sole justification for the deployment of an ECW. See policy recommendation on page 16 for further guidance on using an ECW against a fleeing subject.

Recommendation: *EPD should ensure training provides clear direction regarding deploying an ECW, including against fleeing subjects, in accordance with policy.*

Injuries

Officer Injuries

In the majority of the 219 use-of-force reports reviewed (93%), no officer injuries were reported. In 7% of the use-of-force reports, at least one officer reported an injury. Most of these injuries were minor, including cuts, scrapes, and bruises, or the exacerbation of preexisting injuries.

Subject Injuries

RMS/Documentation issues

We identified more than 20 incidents in which different officers involved in the same incident documented subject injuries and/or treatments differently in their respective reports. Additionally, there were discrepancies between information reported in the RMS fields versus the narratives. For example, “no injury” might be selected in the RMS fields, but a minor injury was reported in the narrative.

In addition, the subject injury categories listed in the RMS are not well-defined, and officers are only able to select one option when completing a use-of-force report (see Figure 12). Finally, some of the injuries indicated in the reports were not related to the officers’ use of force, but instead appeared to be related to preexisting injuries. For example, in one case, a subject who was involved in a traffic collision stemming from a vehicle pursuit complained of back pain, but the only force the officers used against the subject was displaying a firearm as part of a high-risk stop. Given these concerns with data quality, we did not think it would be valuable to report on EPD’s subject injury data.



The screenshot shows a software interface titled "RMS Subject Injury". Below the title is a "Search For:" field. A table with three columns: "Code", "Description", and "State Code" is displayed. The table contains the following rows:

Code	Description	State Code
COMP	COMPLAINT OF PAIN	COMP
CONT	CONTAMINATED BY BODILY FLUID	CONT
EXPO	EXPOSURE: CHEMICAL	EXPO
FATA	FATAL INJURY	FATA
ILL	ILLNESS/MEDICAL PROBLEM	ILL
K9	ANIMAL BITE	K9
MIN	MINOR INJURY (EXPLAIN IN NARRATIVE)	MIN
NONE	NONE	NONE
SEV	SEVERE INJURY (EXPLAIN IN NARRATIVE)	SEV

Figure 12. The “subject injury” menu in EPD’s RMS.

Recommendation: *EPD should create more detailed injury categories to better record the nature of injuries sustained by subjects and officers. For example:*

- Bite
- Broken bone
- Bruise/abrasion
- Complaint of pain
- ECW puncture
- Gunshot wound
- Internal injury
- Laceration
- Sprain/soreness
- None
- Other

Recommendation: *EPD should ensure its RMS allows for the selection of more than one injury category. In addition, EPD should only document injuries that occurred as a result of the use of force, as opposed to pre-existing or other injuries. Previous injuries can be documented in the officer's incident report.*

Subject State of Mind Factors

RMS Issues

EPD's RMS contains a data field titled "Under the Influence Of" to record whether the subject was under the influence of alcohol or drugs during the incident, or was known to have a mental illness. However, officers are only able to select one of the following categories: Alcohol, mental illness, alcohol/drugs, non-compliance, none, drugs, or violent (Figure 13). There are several issues with these categories. First, it is unclear whether the "alcohol/drugs" category refers to alcohol *or* drugs, versus alcohol *and* drugs, given that there are additional individual categories for alcohol and drugs. In addition, "non compliance", "violent", and "mental illness" are not appropriate categories to indicate that subjects are "under the influence" of a substance. Finally, in addition to being ill-defined, these categories are not mutually exclusive. For example, if a subject was both mentally ill and under the influence of alcohol, there would be no way to document this in the RMS.

Code	Description	State Code
1056	ALCOHOL	1056
1096	MENTAL ILLNESS	1096
BOTH	ALCOHOL/DRUGS	BOTH
NON	NON COMPLIANCE	NON
NONE	NONE	NONE
S90	DRUGS	S90
VIOL	VIOLENT	VIOL

Figure 13. The "subject under the influence of" menu in EPD's RMS.

Recommendation: EPD should, if technically feasible, allow officers to select multiple options in the "subject under influence" field in the RMS.

Recommendation: EPD should clearly define and provide instruction on proper use of the "alcohol", "drugs", and "alcohol/drugs" categories. If multiple options can be selected in the RMS, this will eliminate the need for the "alcohol/drugs" category.

Recommendation: EPD should remove the "non compliance" and "violent" categories from the "under the influence" section of the RMS, as these do not constitute being under the influence of a particular substance or mental state.

Recommendation: EPD should create a separate data field to capture whether a subject suffers from mental illness, as this should not be considered "under the influence".

Subject State of Mind: Analysis

In light of the issues identified above, the team reviewed the narratives associated with the use-of-force reports in an attempt to more accurately classify subjects' state of mind during the incident. For example, we classified a subject as having a "mental illness" only in instances where a narrative stated that the subject had a known history of mental illness. Similarly, we classified a subject as "suicidal" if this was noted in the narrative. In the case of alcohol, subjects were classified as being under the influence of alcohol if it was indicated in the RMS fields and/or stated in a narrative. In the case of drugs, subjects were classified as being under the influence of drugs if it was explicitly mentioned in a narrative. This was because numerous officers selected the option "Alcohol/Drugs" when there was no mention of drugs in the narrative. We surmised that this was due to officers interpreting this option to mean "Alcohol *or* drugs" instead of "Alcohol *and* drugs." We did not include "non-compliance" or "violent" categories in our review, as these are not necessarily an indication that a subject is "under the influence" of a substance.

Based on our review, 30% of subjects were under the influence of alcohol, 10% were under the influence of one or more drugs (other than alcohol), 6% were suicidal, and 4% were known or discovered to have one or more mental illnesses (Figure 14).²³

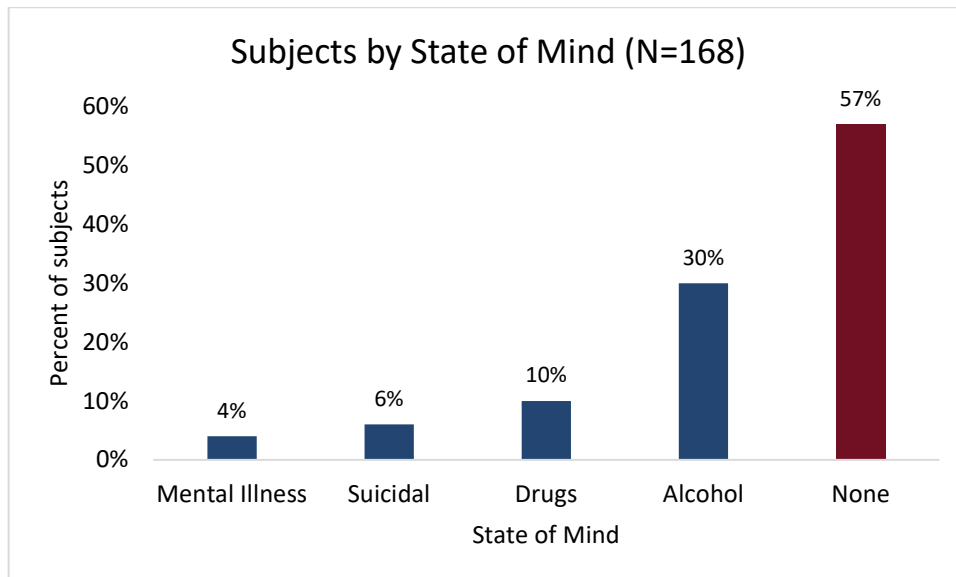


Figure 14. Numbers do not total 100% because categories are not mutually exclusive. E.g. A suspect can be under the influence of both alcohol and drugs.

Overall, more than two fifths (43%) of subjects fell into one of these categories, according to information provided in the RMS fields and report narratives.

Recommendation: EPD should consider adding “suicidal” as a category in its RMS. This category could be added in the same data field as the “subject with mental illness” classification, separately from the “under the influence of” categories.

Recommendation: EPD should ensure this information is captured accurately so it can identify particular trends that may need to be addressed through training. For example, if data indicates that officers are using force on a high number of people with developmental disabilities, EPD should ensure officers receive appropriate training on how to interact with these individuals.

Charges filed Against Subjects

The project team analyzed data on the charges filed against subjects. Of the 168 subjects (two appeared in two separate incidents during the period of review and were therefore counted twice), 145 (86%) were arrested during the incident in question. Of the 23 (14%) of subjects that were not arrested during the incident, the use of force was most often the mere display of a firearm, or the individual was experiencing a mental health crisis.

²³ As two subjects had force used on them in two separate incidents during the review period, those subjects were counted twice for purposes of this analysis, resulting in a total of 168.

For the subjects that were arrested, we extracted the statutes in the “charges” section of the RMS and organized them into general categories of offenses. We counted a subject as having been charged with at least one offense in the relevant category(s). For example, if a subject was charged with possession of heroin (controlled substance offense), possession of cocaine (controlled substance offense), and disorderly conduct, they were counted *once* in the controlled substance category *and* once in the disorderly conduct category.

We found that several categories of charges filed against subjects were common. These charges included fleeing (33% of subjects)²⁴, resisting (29%)²⁵, controlled substances (23%), assault (20%)²⁶, and traffic offenses (15%)²⁷ (Figure 15).

²⁴ We recognize that fleeing is a form of resisting. We elected to separate these categories as they may warrant different responses from officers.

²⁵ We classified the offense of resisting with bodily injury as “resisting” as opposed to “assault.”

²⁶ The category “assault” includes offenses traditionally referred to as “battery.” These include battery on a police officer, criminal recklessness, and disorderly conduct (fight).

²⁷ Other than OWI/DUI.

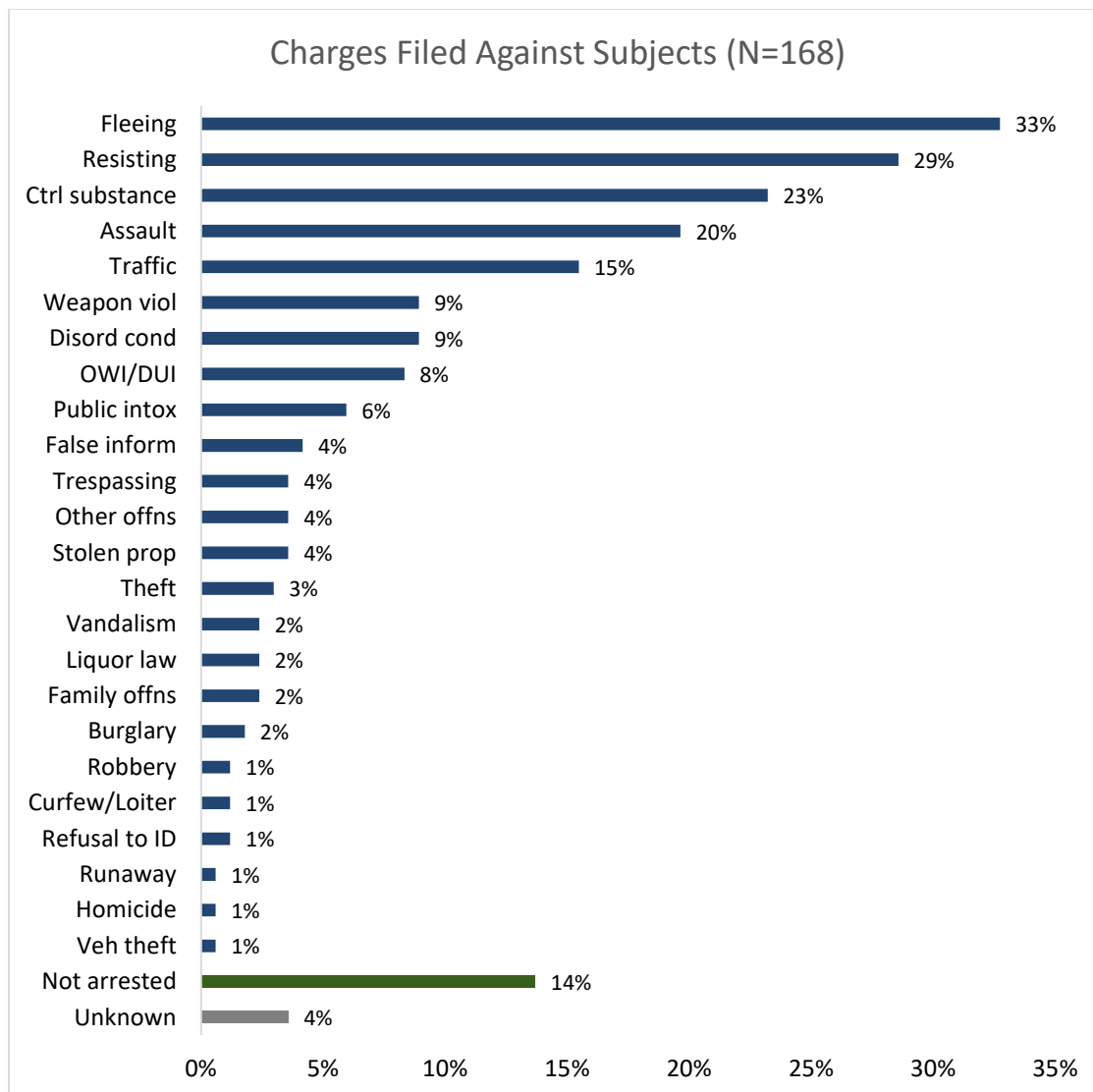


Figure 15. Subjects grouped by charges filed by officers. Read: X% of subjects were charged with one or more charges in Y category.

Other Documentation Issues

Vague and non-descriptive phrases

The project team identified several vague and non-descriptive phrases used in numerous narratives. For example, phrases such as, but not limited to variations of “escorted to”, “assisted to”, “placed on”, and “took to” the ground are used frequently to describe the act of removing a subject from a standing position. We identified multiple narratives using these phrases, which do not adequately describe the type or amount of force used — only the result.

We also observed that many reports did not consistently provide adequate detail regarding ECW deployments. Officers sometimes wrote that they “deployed” an ECW, but did not elaborate on the mode the device was used in (e.g. probe or drive-stun), where the probes struck, the number of cycles used, or the treatment offered/administered. It is critical that supervisors can accurately assess how

ECWs are used so they can quickly identify and remedy any equipment or training deficiencies regarding these less-lethal weapons.

Based on our review of use-of-force narratives, it was not always clear which portions, if any, of a use-of force-incident were recorded on a given officer's dashcam or body-worn camera. Officers often stated that the "incident was recorded on Digital Ally". Digital Ally is a brand; stating that a recording was made on "Digital Ally" does not clarify the type(s) of cameras that recorded the use of force. Further, when referring to or implying that the incident was solely recorded on dashcam, merely stating that the "incident" was recorded does not always clarify which portions, if any, were video-recorded. Finally, officers often state that an incident "was not recorded" without specifying why that was the case. When reviewing reports, supervisors should be able to assess whether the reason for the lack of a video recording is within policy.

In addition, the team found several cases in which an officer cited the rapidly evolving nature of an incident as their reason for failing to immediately activate their body-worn camera. EPD Special Order 2016-002 (effective October 3, 2016) states that a body-worn camera "shall be activated when responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a police officer and a member of the public." Though we understand that incidents can unfold rapidly, in each of these cases, the primary officers made conscious decisions to initiate contact when no urgency existed. Thus, the officers in these cases likely had the time to safely activate their cameras but did not do so for unknown reasons. For example, in one incident, an officer reported that they attempted to initiate a traffic stop on a subject after observing the subject commit several moving violations. The officer wrote that they activated their dashcam but that their body-worn camera "was not turned on due to how fast the events transpired."

Recommendation: *EPD should ensure that officers clearly state in their narrative whether an incident was recorded on their dashcam and/or body-worn camera and, if applicable, the reason the incident was not recorded. This is important so that supervisors can assess whether the lack of a video is consistent with policy. Further, the rapidly evolving nature of an incident should not be cited as a reason for not activating a body-worn camera.*

Supervisor Review

According to interviews with EPD personnel, lieutenants are responsible for reviewing use-of-force reports in EPD's RMS. They are to indicate whether they believe the use of force should be "approved" and articulate why they came to that conclusion.

However, the team found that some use-of-force reports were approved by supervisors without further action, despite the fact that there were opportunities to improve an officer's response or otherwise consider possible policy violations, particularly regarding ECW use, reporting, and display of firearms.

We also found that the entered explanations by supervisors were often insufficient and lacked detail in the rationale for the conclusion. An overwhelming majority of the explanations were variations of the same generic statement that the use of force was/was not within policy and that a video was/was not reviewed. More than one sixth (17%) of supervisor reviews *solely* stated the following, verbatim: "This Use Of Force [sic] is within department guidelines and G.O's [general orders]. The video has been

reviewed.” Cases with any explanation as to why the reviewing supervisor marked the report as they did were rare. In fact, 87% of supervisor explanations were fewer than sixteen words long, with an additional 2% being left blank.

Recommendation: *The documentation issues discussed above should be addressed in training so that EPD officers and supervisors have clear expectations when writing and reviewing reports. For example, officers should provide justification in their reports for failing to activate a BWC. Similarly, supervisors should properly document what actions they took in their review of reports (e.g., who they interviewed, which videos they watched, tactical considerations, etc.) When supervisors observe these issues in reports, they should be addressed through training and counseling.*

SECTION III: REVIEW OF USE-OF-FORCE TRAINING

Based on discussions with EPD personnel, the agency provides in-service training on defensive tactics twice per year. This can include scenario-based training. In addition, some officers have received Crisis Intervention Teams training (CIT), but EPD has not had agency-wide training that focuses specifically on defusing critical incidents, critical thinking, and tactical communication.

Recommendation: *EPD should implement training on defusing critical incidents, critical thinking, and tactical communications. It is important that the training selected be based on best practices and the practical experience of top-notch officers. The Integrating Communications, Assessment And Tactics (ICAT) Training Guide, described below and available through PERF, was developed by a working group of policing professionals, reviewed by experts in the field, and pilot-tested before being made available to police departments throughout the United States (see methodology description below).*

PERF's Integrating Communications, Assessment, And Tactics Training Guide

To help law enforcement agencies implement PERF's 30 Guiding Principles on Use of Force²⁸, PERF developed *ICAT: Integrating Communications, Assessment, and Tactics*,²⁹ a training guide that represents a new way of thinking about use-of-force training for American police officers. ICAT takes the essential building blocks of critical thinking, crisis intervention, communications, and tactics, and puts them together in an integrated approach to training.

ICAT is designed to increase officer safety and public safety by providing officers with more tools, skills, and options for handling critical incidents, especially those involving subjects who are in crisis but who are not armed with firearms. The cornerstones of ICAT include slowing incidents down in order to avoid reaching a point where there is a need to use lethal force, upholding the sanctity of life, building community trust, and protecting officers from physical, emotional, and legal harm.

The ICAT Training Guide is comprised of six modules:

- Introduction to ICAT
- Critical Decision-Making Model
- Crisis Recognition and Response
- Tactical Communications
- Operational Safety Tactics
- Integration and Practice.

The ICAT Training Guide includes model lesson plans, scenario-based training exercises, PowerPoint presentations, case study videos of use-of-force incidents, and other resources. The Training Guide was

²⁸ Police Executive Research Forum (2016). *Guiding Principles on Use of Force*. <https://www.policeforum.org/assets/guidingprinciples1.pdf>

²⁹ Police Executive Research Forum (2016). *ICAT: Integrating Communications, Assessment, and Tactics. Training Guide for Defusing Critical Incidents*. <http://www.policeforum.org/assets/icattrainingguide.pdf>

developed with the help of a working group of more than 60 professionals representing law enforcement agencies and other organizations from across the country. A panel of 10 policing experts reviewed a draft of the Training Guide, and the training was pilot-tested in seven sites throughout the country in August and September of 2016.

Feedback from the expert review and pilot sites was incorporated into a final report³⁰ that was released in October 2016. In December 2016, PERF held a national meeting on how to implement ICAT Training. This meeting, held in New Orleans, was attended by more than 400 individuals representing more than 160 police agencies.

PERF held similar meetings in 2017 in Baltimore; Los Angeles; Columbia, SC; and Camden County, NJ to help agencies implement ICAT training. In 2018, sessions were held in Minnesota; Balch Springs, TX; and Watsonville, CA. As of December 2018, more than 500 law enforcement agencies have attended these ICAT training meetings.

EPD's new policies related to use of force contain good information on use-of-force practices and protocols, but EPD will need to implement agency-wide training in order to bring personnel up to speed on these new policy changes and responsibilities. PERF learned that officers have been asked to acknowledge recent policy updates, but have not received formal training on the new use-of-force policy. EPD must ensure that changes being made in policy are supported by changes in training.

Recommendation: *EPD should institute training regarding policy changes and consequent revised officer responsibilities. Further, the training should be in-person training; simply reviewing policies online does not accomplish the task of clarifying the policies and reasons for them in the minds of officers.*

PERF also learned that sergeants are currently not receiving training on use-of-force reporting, proper review of use-of-force reports, or the internal affairs process. It is important that supervisors receive training on these topics upon promotion, so that they are prepared to effectively take on the responsibilities of their new role.

Recommendation: *EPD should implement training for newly-promoted sergeants regarding use-of-force reporting, use-of-force review, and requirements for investigating complaints. In addition, supervisors should monitor the implementation of training in the field. If officers are not in compliance with training, supervisors should intervene and correct the behavior immediately. Supervisors should be held accountable if these corrective measures are not taken.*

³⁰ Ibid.

SECTION IV. REVIEW OF COMPLAINTS AGAINST EPD PERSONNEL AND DISCIPLINARY PROCESS

The project team conducted interviews with Professional Standards and other EPD personnel to assess the current complaint reception and investigative process, as well as EPD's disciplinary practices. As part of its assessment, the team reviewed EPD's Policy 1010: Personnel Complaints, as well as data from complaint and Internal Affairs investigations that occurred between January 2016 and December 2018.

Overall, EPD's policy 1010 on Personnel Complaints, implemented in March 2019, appears to contain thorough information on proper protocols for receiving and investigating complaints. However, based on interviews with EPD personnel, it appears that officers have not received training on the new policy, and therefore may not be consistently following the guidance outlined in this policy.

In the following sections, we describe EPD's current complaint reception and investigative processes and provide recommendations for improvement. We also provide findings and recommendations with regard to policy, as well as EPD's disciplinary processes.

Complaint Reception and Investigative Process

The following section describes EPD's current complaint reception and investigative process, and provides findings and recommendations for improvement.

Findings

Complaint Intake

Citizens of Elkhart can submit a complaint to EPD in-person, by phone, or via email. However, as of the time of our review, the EPD website did not provide an option to submit a complaint online. Further, the EPD website does not appear to provide a great deal of information regarding how citizens may submit a complaint. On the website, citizens are instructed to complete a form providing their contact information and a brief message if they would like to file a complaint, but it is unclear what the next steps of the process would entail.

According to the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS Office) report *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice*, agencies should provide an electronic version of the complaint form on the department website that can be filled out electronically. In addition, the complaint process should accommodate all languages spoken by a substantial proportion of residents in the region.³¹

Recommendation: *EPD should create an electronic version of the complaint form that can be completed and submitted online via the department website. This will make complaint submission more easily accessible to the community, and will allow for more efficient intake of complaints. A tab should be created on EPD's homepage to allow community members to file a*

³¹ Community Oriented Policing Services (COPS). "Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice." <https://cops.usdoj.gov/RIC/Publications/cops-p164-pub.pdf>

compliment or complaint about an officer. Language reflecting this online option should also be added to Policy 1010: Personnel Complaints.

Recommendation: *In addition to providing clear instructions on the agency website regarding how to file a complaint, EPD should also ensure there is signage in both English and Spanish in the department lobby informing community members of how to file a complaint or compliment an officer.*

Recommendation: *EPD should enhance policy related to the complaint intake process by strengthening the language in Policy 1010, Section 1010.3.2. Current policy states that “anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided”. EPD should strengthen this language to state that “anonymous and third-party complaints will be accepted and investigated to the extent that sufficient information is provided”.*

Complaint Reception

Based on interviews with EPD personnel, the team learned that supervisors are responsible for receiving and initiating complaints. The supervisor that receives or initiates the complaint is supposed to document the complaint in the relevant module of EPD’s RMS. From there, the complaint is reviewed by EPD’s Professional Standards (PS) Lieutenant, who decides whether the complaint should be handled as an Internal Affairs (IA) investigation (investigated by Professional Standards), or at the shift level (investigated by a supervisor). In general, more severe complaints are handled as an IA investigation, and less severe complaints are handled by supervisors at the shift level. However, there appeared to be a lack of clear guidance as to how this determination is made.

Recommendation: *EPD should develop clear criteria for procedures delineating what types of complaints will be handled by PS versus at the shift level by supervisors. PS should conduct any serious administrative investigation, including allegations of use of force, any allegations that could be criminal in nature or would constitute a constitutional violation, or any time there are repeat or multiple allegations against a specific officer. Less serious complaints such as rudeness, speeding, or abuse of leave can appropriately be investigated at the shift level. General guidance on these criteria should be outlined in policy.*

The team was also informed that often if a complaint is deemed “minor”, it is handled informally by the supervisor and may not be formally documented or reviewed by Professional Standards.

Recommendation: *All complaints, even those that are considered “minor”, low-level or “informal”, should be documented in EPD’s RMS. If a supervisor is able to address a complainant’s concern without conducting a formal investigation, this should be indicated in the narrative section of the complaint module.*

Complaint Investigation

According to interviews with EPD, in cases where the Professional Standards Lieutenant determines that a complaint will be handled at the shift level, the responsible supervisor is tasked with investigating the complaint and documenting their actions in the complaint module of the RMS. We learned that complaints handled at the shift level do not often involve a formal investigation. Rather, the supervisory action in these cases usually consists of the supervisor reviewing body-worn or dash camera footage and/or the associated incident report to determine whether it is consistent with the allegations in the

complaint. In many cases, the accused officer is apparently not even informed that they were the subject of a complaint or asked to participate in an interview during this process. Overall, there appeared to be a lack of clear expectations for supervisors as to what constitutes a thorough complaint investigation; EPD staff reported that supervisors have not received training in this area.

Recommendation: *EPD's Policy 1010 outlines supervisor responsibilities for handling complaint investigations under section 1010.6.1. Sections 1010.6.2 and 1010.6.3 discuss administrative investigation procedures and the proper format for administrative investigations. EPD should ensure that all supervisors are trained on this policy and are following appropriate procedures. In addition, EPD should ensure the process outlined in policy 1010 is consistent with the recommendations in this report.*

Recommendation: *Professional Standards may also consider developing a checklist or guide outlining the steps that need to be completed in any complaint investigation for use by supervisors conducting investigations in the field.*

Recommendation: *If a complaint is investigated at the shift level, the Professional Standards lieutenant should assign the case to the lieutenant in the accused officer's chain of command. The lieutenant can then either handle the investigation or assign it to the appropriate sergeant, depending on workload and availability. The assigned supervisor should conduct a thorough investigation and properly document all investigative steps. Following the investigation, the supervisor should create a list of potential charges and policy violations, and send the investigative file to Professional Standards for review. The Professional Standards lieutenant should review the file to ensure the investigation is complete and that he agrees with the applicable charges. Then, the file should be sent to a three-member captain panel to make a recommendation as to the disposition(s), and if sustained, the discipline. Once the chief has made a determination on the final disposition(s) and discipline (if applicable), the entire investigation, final report, and disposition should then be documented in the IA module of EPD's RMS. (See process map on page 46 for further details on the team's recommended complaint investigative process.)*

*IA Investigations*³²

The project team learned that in the complaint module of EPD's RMS, there is an option to "submit a complaint to IA". In cases where Professional Standards determines that a complaint should be handled by IA, the PS lieutenant utilizes this "submit to IA" function, which sends the case to the IA module of the RMS where it can only be accessed by Professional Standards. When this happens, the complaint receives an IA case number and is captured in EPD's IA database.

According to interviews with the Professional Standards Lieutenant, the IA investigation process is as follows. As soon as an investigation is opened, a notification is sent to the chief and involved officers regarding the alleged incident and potential charges. The notification states that the accused officer will be contacted at a later time and date to schedule an interview. Officers are ordered not to talk to anyone outside of IA about anything associated with the investigation. Professional Standards then

³² EPD uses the terms "Professional Standards" and "Internal Affairs" interchangeably. In policy, the unit is referred to as Professional Standards, but in EPD's RMS, investigations are classified as "Internal Affairs" cases.

interviews the victim, witnesses, and the officers. Interviews are recorded, which is consistent with best practices.

According to EPD's new policy 1010, the investigative file is sent from IA to the accused officer's captain, and then to the chief. The PS lieutenant and captain makes a recommendation on the disposition, and the captain makes a recommendation on discipline for the chief to review. Once the chief makes a final decision, a charge letter is sent to the officer. The final investigative file with the allegation, officers involved, potential charges, and complaint summary is then sent to the chief.

Recommendation: *The PS lieutenant should not make a recommendation on the disposition(s), but rather provide the findings of the investigation as well as the administrative charges and policy violations that would apply if the allegation(s) were sustained. These should be reviewed by the three-member captain panel, who should then make a recommendation to the chief regarding the disposition(s) of the matter (sustained, not sustained). If the panel recommends that the complaint is sustained, they can also make a recommendation on applicable discipline.*

Timeliness of Investigations

EPD officers expressed during interviews that they felt the internal affairs investigative process is inefficient. For example, one officer reported that a complaint made against him took up to six months to resolve. There also appeared to be a perception that the way cases are handled can vary depending on the officers and supervisors involved, and that there is a lack of consistency in how cases are handled with regard to discipline.

The team heard that in some cases a complaint will be sent to IA, but Professional Standards will wait to proceed with the investigation in order to avoid placing stress on the officer. Other EPD personnel expressed concerns that cases would be sent to IA and that nothing would be done with them. This apparently has occurred even in situations where the officer does not contest the complaint. Supervisors expressed frustration that they frequently are not informed about the results of an IA investigation for long periods of time. Excessive delays in case investigation have negative impacts to the complainant, the involved officer(s), and the community.

Recommendation: *EPD should ensure timeliness in the completion of IA investigations. According to EPD policy, the time limit for completing an IA investigation is currently 30 days, but it has often taken far longer, in part because of limited staffing which has since been addressed (see below). Based on our review of complaint data (see page 56) however, it appears this time limit is unrealistic and often violated. EPD should review this timeframe and consider extending it to 90 days. Any exception to the 90 day rule should be subject to approval by the chief on a case by case basis.*

- **EPD Action Taken:** EPD has already taken steps to address the timeliness of IA investigations by hiring an additional sergeant to work in Professional Standards. This should help to reduce the workload of the current Lieutenant and ensure that investigations are completed in a timely fashion.

Recommendation: *Professional Standards should develop clear protocols and procedures regarding the investigation of complaints. Supervisors should be educated on these protocols so they have a clear understanding of the IA investigative process, and these procedures should be documented in policy.*

Classification of Complaints

The team learned that EPD does not have a consistent numbering or classification system for complaints. If a complaint is associated with a particular incident, the case number will be the same as the associated incident number. If a complaint is not associated with a particular incident, it will not receive a specific case number. For example, if a citizen complains that an EPD officer was speeding, there would be no specific incident attached to the complaint, and therefore the complaint would not receive a case number. Complaints that are sent to IA for investigation are tracked in a different module, and therefore receive a separate IA case number. The project team recommends the following process to streamline the investigation and tracking of complaints.

Recommendation: *When a complaint is received, it should be entered into the complaint module of EPD's RMS and assigned a case number for tracking purposes. All complaints to be investigated should be "submitted to IA" for review by the Professional Standards lieutenant, who should in turn discuss the complaint with the chief to determine how it will be assigned for investigation (i.e., investigated by IA vs. handled by a supervisor). If the case is investigated by IA, all investigative steps should be documented in the IA module of the RMS, including uploading a copy of the final report to the RMS.*

Recommendation: *In instances where a complaint is vague or does not contain enough information to conduct a complete investigation, the complaint could be classified as an "inquiry" in EPD's complaint module. The PSU lieutenant should follow up on these cases to determine whether further information can be obtained. If it is determined that the case does not need to be investigated further, it can be closed. However, the results of the inquiry should still be documented in the complaint module.*

Recommendation: *In section 1010.3.1 of EPD's Personnel Complaints policy, criteria are provided for classifying complaints as either "informal", "formal", or "incomplete". The "incomplete" classification is described as "a matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the direction of the assigned supervisor or Professional Standards, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information". EPD should change the name of this category to an "inquiry", as it appears to describe the scenario in the above recommendation. EPD should also add language to this section of the policy to clarify that an investigation should only be terminated at the discretion of Professional Standards. Just because a complainant refuses to cooperate or is unavailable should not be a reason to terminate an investigation.*

Recommended Complaint Reception and Investigative Process

In this report, we have made several recommendations regarding changes to the complaint reception and investigative process. An overview of the proposed changes to the process is described below. The team developed a process map depicting the new recommended investigative process from intake to final disposition and discipline. In addition to implementing these new protocols, EPD should modify the language in its Personnel Complaints policy under section 1010.6: "Administrative Investigations" in accordance with this new process.

Complaint Intake

Upon intake, all complaints should be entered into the complaint module and reviewed by the PS lieutenant. After initial intake and review of a complaint, the PS lieutenant should discuss the complaint with the chief to determine whether it should be handled at the shift level or by Professional Standards. The PS lieutenant should also update the chief on any complaints that have been classified as “inquiries”. All complaints that are not classified as inquiries should be “sent to IA” and assigned a tracking number by Professional Standards.

Complaints Investigated at the Shift Level

Supervisors investigating complaints at the shift level should apply the same standards and investigative steps as Professional Standards when conducting an investigation. Supervisors should follow the steps outlined in section 1010.6.3 of EPD’s Personnel Complaints policy when writing the investigative report. After a complaint is investigated by a supervisor, the investigative file should be reviewed by the PS lieutenant for thoroughness. After reviewing the file, the lieutenant may send it back to the supervisor for further investigation if necessary.

Disposition and Discipline

Once the investigation is complete, the PS lieutenant should list the administrative charges or policy violations that would apply if the allegation(s) were sustained. A three-member captain panel should then review the file and make recommendations on disposition(s) for each allegation, and if sustained recommendations on discipline. These recommendations should be reviewed by the chief, who should make the final determination on the disposition(s) and discipline, if applicable. After the chief makes the final decision, the entire investigation, final report, and disposition should be documented in the IA module of EPD’s RMS.

EPD Action Taken: *The team has discussed this recommended process with the chief, and the chief has agreed to implement the process as well as provide training on updated protocols and procedures.*

The following process map illustrates our recommended complaint intake and investigative process.

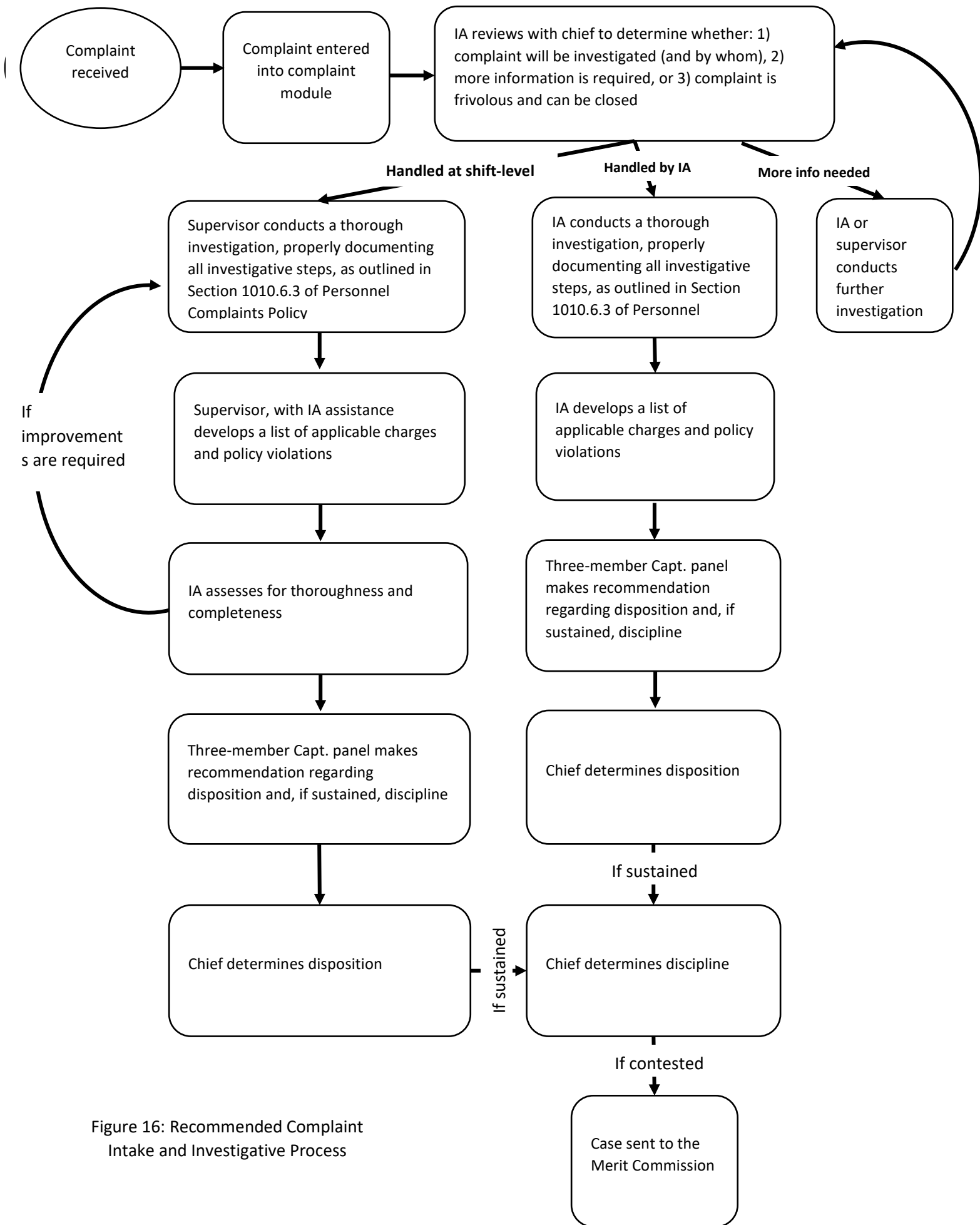


Figure 16: Recommended Complaint Intake and Investigative Process

Review of Complaint Data

In order to further understand EPD's complaint investigative process, the team reviewed complaint data from 2016 through 2018. This data was extracted from the complaint module of EPD's RMS. During the time period under review, there were 108 total complaints (24 commendations were excluded from the analysis).

Overall, the annual number of complaints stayed relatively consistent between 2016 and 2018, with 39 complaints in 2016, 29 in 2017, and 40 in 2018. However, this information is based upon the number of complaints that were documented in EPD's RMS. As mentioned previously, we learned that sometimes complaints are not documented when they are handled informally. This suggests that there may be additional complaints that are not captured in this data.

Complaint Intake

Of the 108 complaints received between 2016 and 2018, 78 (72%) were citizen complaints, 27 (25%) were internal complaints, and 3 were "requests for discipline"³³. Figure 17 displays a chart of the various types of complaints received per year.

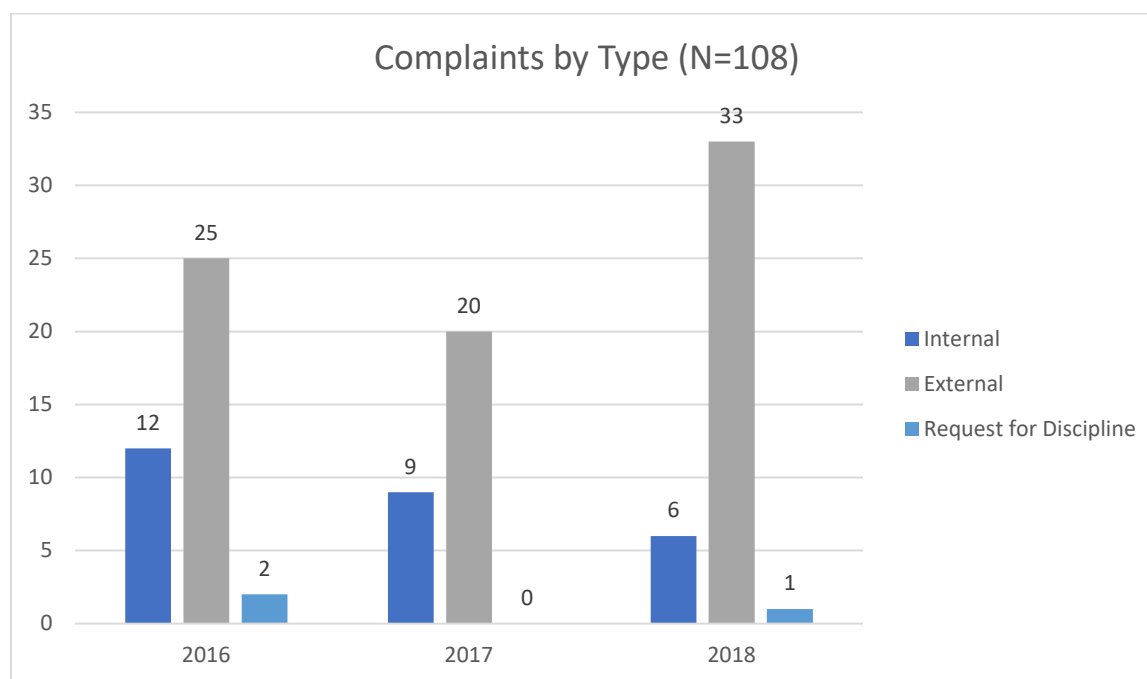


Figure 17

Figure 18 shows the method by which citizen (external) complaints were received over the three-year period. Of the 78 citizen complaints, the majority (62%) were received by phone. Complaints received in-person and by phone comprised 88% of the total citizen complaints received between 2016 and 2018. As discussed and recommended on page 40-41 above, EPD should allow for complaints to be submitted

³³ A "request for discipline" is used when a supervisor is requesting discipline for an officer based on, for example, a repeated offense.

online via the agency website. This may increase accessibility to members of the community and allow for the reception of additional citizen complaints.

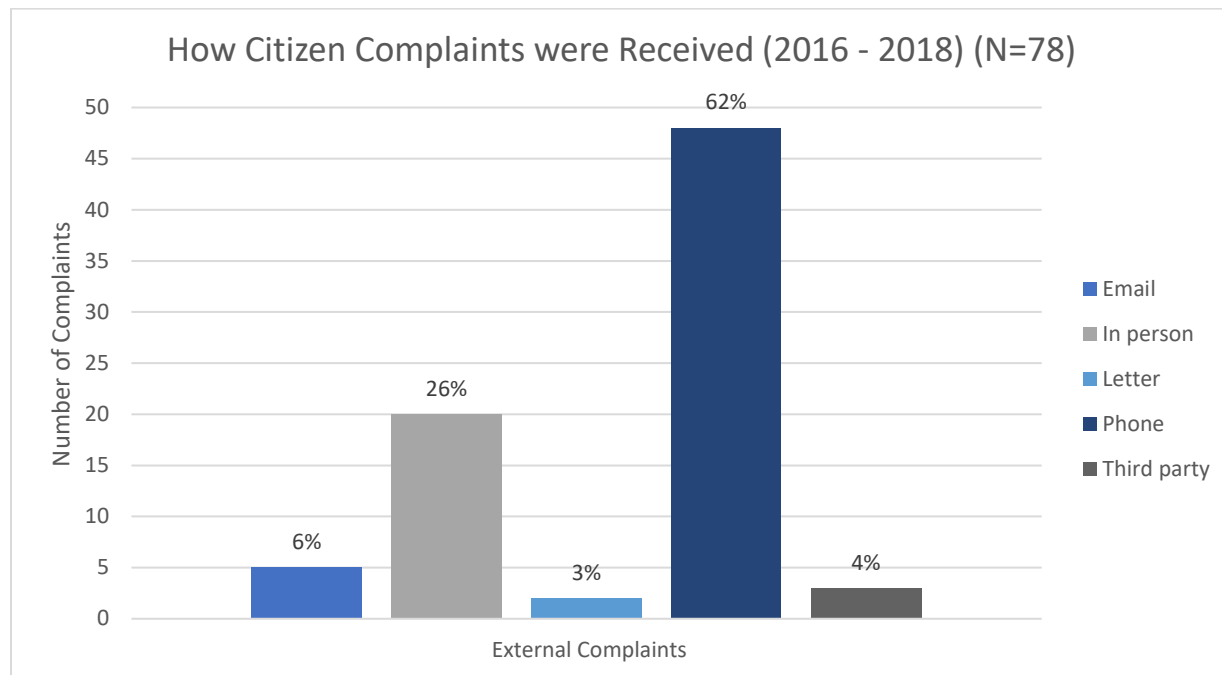


Figure 18

Complaint Nature

EPD's RMS provides a drop-down menu that allows for the classification of complaints by their nature. Classifications include: "civil rights violation", "criminal offense", "excessive force", "inquiry", "misconduct (G.O. violation)", "rudeness", and "violation of city policies". However, we did not find a description of these classifications or the appropriate way to apply them in policy.

Recommendation: *EPD should provide descriptions of the various classification categories and how to appropriately apply them in policy 1010. EPD should ensure that these classification categories reflect the types of complaints the agency has received in the past. In addition, supervisors should be trained on how to use these categories when classifying complaints.*

According to data extracted from EPD's RMS from between 2016 and 2018, the breakdown of complaints by nature is as follows: 9 (8.3%) were classified as "civil rights violation", 3 (2.7%) were classified as "criminal offense", 10 (9.3%) were classified as "excessive force", 28 (25.9%) were classified as "inquiry", 35 (32.4%) were classified as "misconduct (G.O. violation)", 19 (17.6%) were classified as "rudeness", and 4 (3.7%) were classified as "violation of city policies".

Based on interviews with Professional Standards, however, the team learned that supervisors are only able to select one of these options from the drop-down menu when classifying complaints, despite the fact that more than one of the options may apply. For example, a complaint may include both an allegation of excessive force and an allegation of rudeness. However, supervisors are forced to select only one option when classifying the complaint, often based on which allegation appears first in the complaint narrative. This suggests that these classifications do not provide a complete and accurate representation of the nature of complaints received by EPD.

Recommendation: *EPD should ensure that the drop-down menu in the complaint module allows for the selection of more than one allegation type when classifying a complaint, and that these options are exhaustive of the various allegations that EPD would like to collect data on.*

The team learned that the “inquiry” classification is used in cases where EPD is not sure initially whether a complaint constitutes a violation, and the complaint needs to be looked into further. This is an appropriate use of the “inquiry” classification (see recommendation on page 45 above). However, we learned that once further investigation is done to determine the nature of such a complaint, the complaint is not always appropriately reclassified in the complaint module. For example, upon review of the complaints classified as “inquiries”, we found that some of the allegations in the narratives would have constituted violations if the investigation determined that they were founded.

Recommendation: *When a complaint is classified as an “inquiry”, the Professional Standards lieutenant should follow up on the complaint to determine whether further information can be obtained. If it is determined that the case does not need to be investigated further, it can be closed. However, if it is determined that the complaint has merit, it should be reclassified in the complaint module under the appropriate category.*

Recommendation: *EPD should create a separate tab in its RMS for classifying complaints as an “inquiry”. This designation is not related to the nature of the complaint and should be classified as a separate variable.*

Complaint Handling

According to data extracted from EPD’s RMS, 26 (24%) of the complaints during the period of review were sent to IA for further investigation, whereas the remaining 82 (76%) were handled at the shift level. Figure 19 displays a chart of the complaints that were handled at the shift level versus by IA. As discussed above, more serious complaints are investigated by IA, whereas less serious complaints are investigated at the shift level by supervisors.

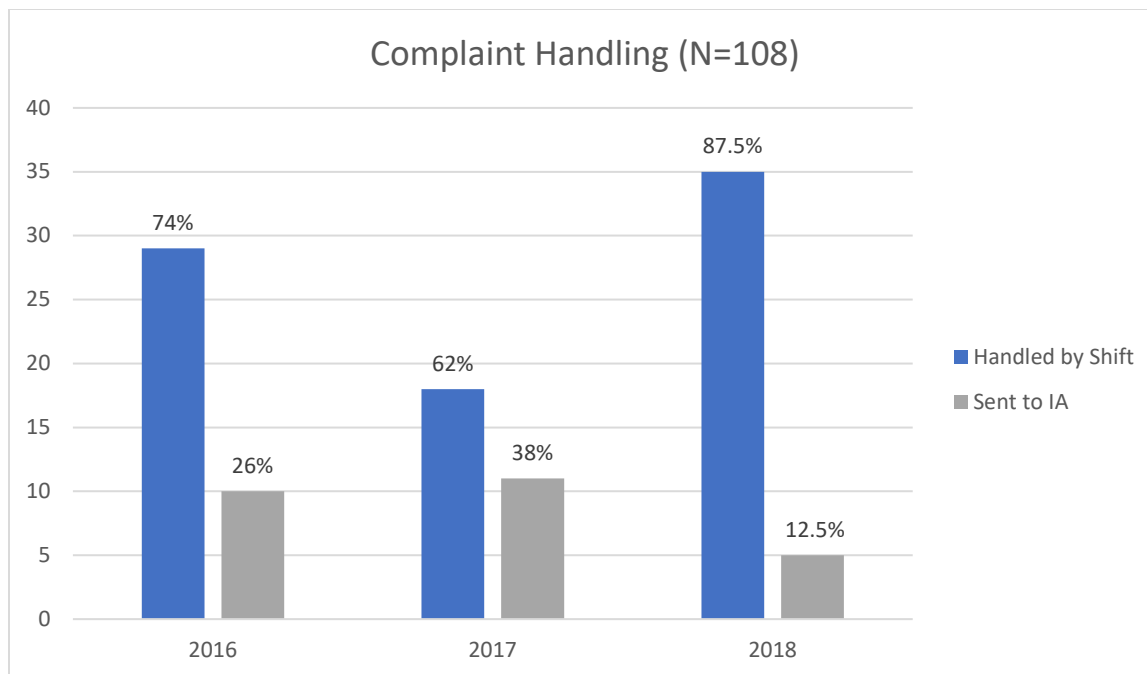


Figure 19

With regard to complaints that were generated internally, roughly half of these cases were investigated at the shift level (44%), while the other half were investigated by IA (56%). However, with regard to citizen complaints, the vast majority of cases (90%) were investigated at the shift level, as compared to by IA (10%). Figure 20 displays the total number of complaints between 2016 and 2018 that were handled at the shift level versus by IA, by type of complaint.

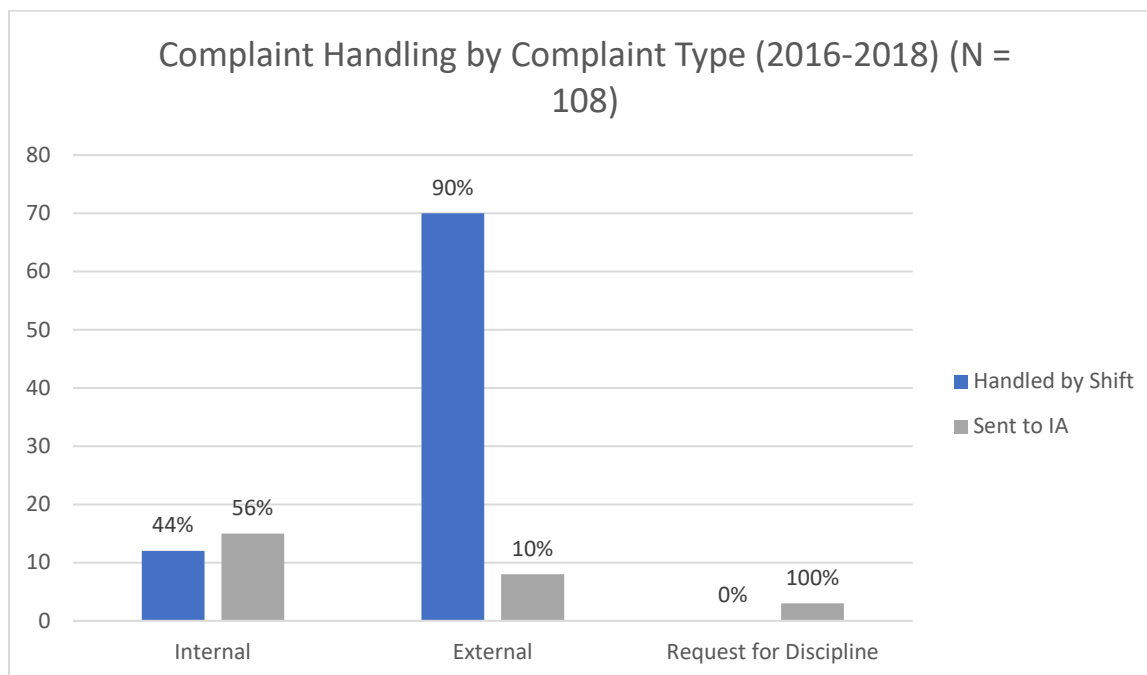


Figure 20

Complaints by Complainant Demographics

EPD's RMS does not capture data on officer demographics. However, it does capture data on complainant demographics. Figures 21-23 illustrate the number of complaints broken down by gender, race, and ethnicity of the complainant.

Recommendation: *EPD's RMS fields should allow for the collection of data on officer demographics within the complaint module. This will allow EPD to determine whether the distribution of complaints is reflective of the gender and racial breakdown among EPD officers.*

68% of complaints received between 2016 and 2018 were from male complainants, while 27% of complaints were received from female complainants. Some of the data fields for complainant gender were left blank in the RMS fields; these are represented by the "unknown" category.

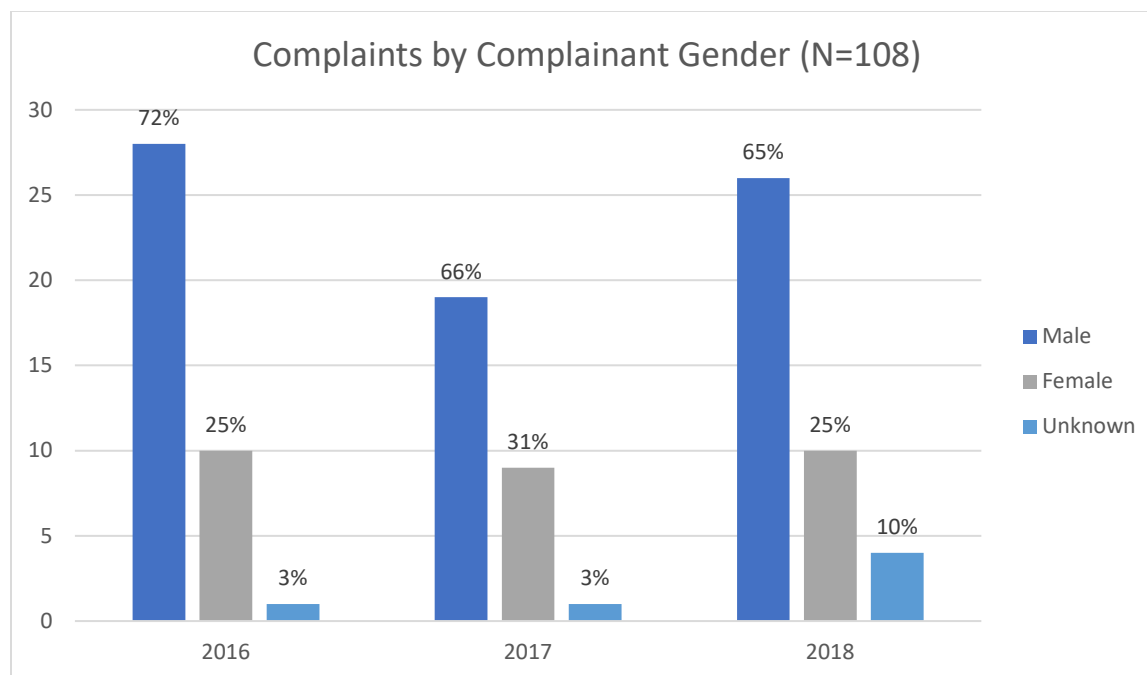


Figure 21

In all three years, the majority of complaints were filed by white complainants (67% in 2016, 86% in 2017, and 63% in 2018). In 2016, 23% of complaints were filed by black complainants; in 2017, 7% were filed by black complainants, and in 2018, 27% were filed by black complainants. No other racial groups were represented in the complaint data, which can be expected as the city of Elkhart is primarily comprised of white and black populations. According to the U.S. Census, 74.5% of citizens in Elkhart are white, and 14.9% are black.³⁴

³⁴ United States Census Bureau. 2018. "QuickFacts: Elkhart city, Indiana." <https://www.census.gov/quickfacts/elkhartcityindiana>

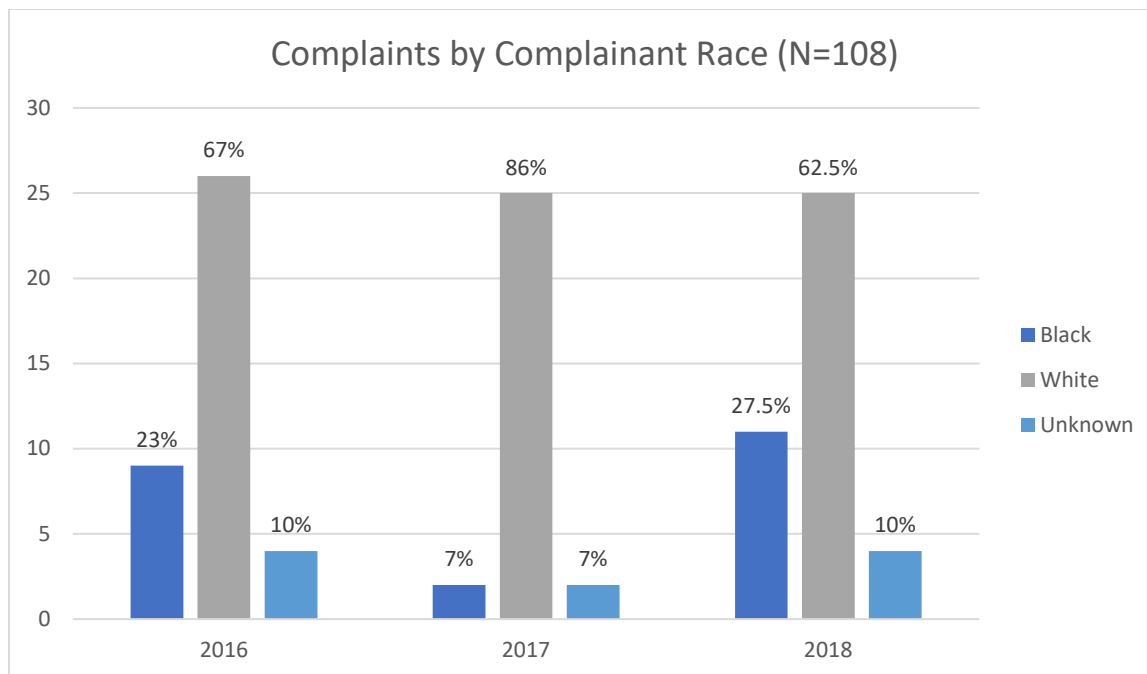


Figure 22

With regard to the ethnicity of complainants, the vast majority were not Hispanic (81%); 2% were Hispanic, and 17% were unknown.

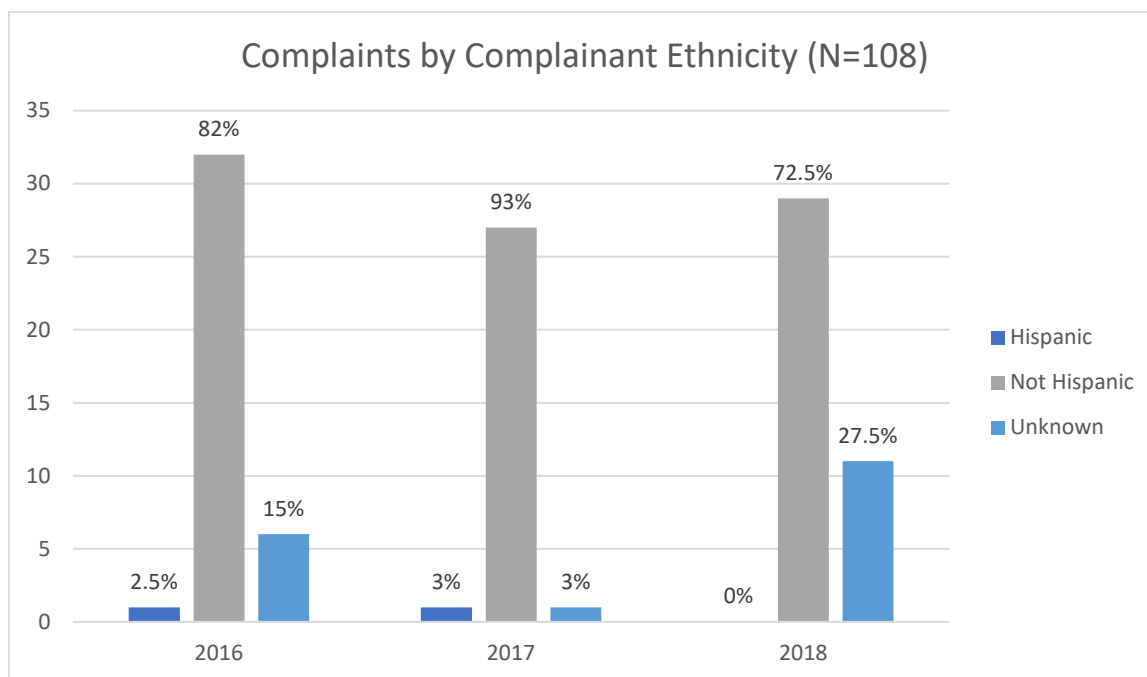


Figure 23

Officers Involved

Based on the data extracted from EPD's RMS, the team determined the number of officers who were involved in complaints during the period under review. EPD's RMS allows supervisors to enter officer ID numbers for officers that are involved in a given complaint. In a number of instances, officer fields were left blank in the RMS. This is to be expected in some cases, as complaints may be general in nature and not identify a specific officer. However, we observed several instances in which officers were identified in the narrative portion of a complaint, but corresponding ID numbers were not documented in the RMS fields. The team reviewed the narratives associated with the complaints in an attempt to identify involved officers who may not have been documented in the RMS fields. Based on this review, we identified 60 total officers who were the subject of complaints between 2016 and 2018. These 60 officers were involved in a total of 94 complaints, but since some complaints involved more than one officer, these 60 officers appeared in complaints a total of 115 times. (Note that the complaints that did not specify the officer(s) involved are not included in this total).

The data suggest that a relatively small number of officers were involved in a disproportionate number of complaints during the review period. Among officers who were the subject of a complaint between 2016 and 2018, 38 (63%) were involved in a single complaint. 19 officers (31.7%) were involved in between 2 and 5 complaints. Finally, three officers were involved in a total of 27 complaints over the three-year period. The top 10 (16.7%) officers who were involved in the most complaints appeared in complaints a total of 53 times, while the remaining 50 (83%) officers appeared in complaints a total of 62 times.

Recommendation: *Capturing, reviewing, and sharing data with the public on complaints and complaint investigations is important to ensure transparency. EPD should train all personnel on the importance of capturing accurate data on complaints, and ensure there is accountability in the review process. In addition, EPD should generate an annual report publicizing data on complaints and internal affairs investigations. Officer names and other identifying information do not have to be included, but the public should have access to general information and trends.*

Recommendation: *EPD should also identify trends with regard to particular officers who have a high volume of complaints. EPD could consider adopting an Early Intervention System (EIS) to assist with tracking this information (see page 75-76 for further information).*

Officer Experience

Taking the 60 officers who were involved in complaints between 2016 and 2018, the team used personnel data provided by EPD to determine the number of years each officer had been on the job at the time of the complaint. EPD provided the team with a personnel list in April 2019 providing a list of employees and their date of hire. We subtracted officers' date of hire from the date of the complaint to obtain the number of years the officer had been employed at the time of the complaint. Note that 10 officers who were involved in complaints during the review period were not listed on the personnel list (presumably because they have since left the agency), and thus, we were not able to determine the years of experience for these officers.

For the 60 officers involved in complaints during the review period, the team calculated their level of experience (in years) at the time of the complaint. This data includes the years of experience for each

officer at each instance in which they were involved in a complaint. Since the review period included three years of data, officers who appeared in more than one complaint over the three-year period may have had different years of experience in different instances. Figure 24 depicts the number of instances in which officers were involved in complaints (N=115) by their years of experience at the time of the complaint. In over half of these instances, the officers involved had five years of experience or less.

The average level of experience of an officer at the time of a complaint was about 6 years. The median level of experience of an officer at the time of a complaint was 3 years.

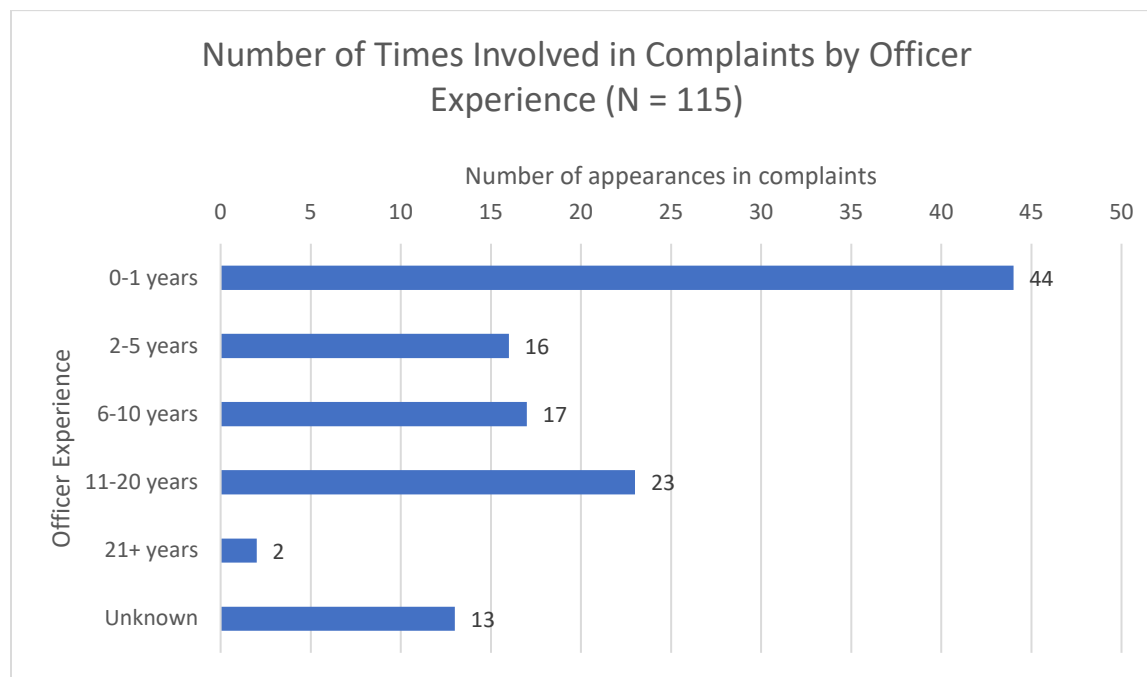


Figure 24

Disposition Type

EPD Policy 1010: Personnel Complaints identifies four different dispositions for complaints, along with the following definitions:

- **Unfounded** – when the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.
- **Exonerated** – When the investigation discloses that the alleged act occurred but that the act was justified, lawful, and/or proper.
- **Not sustained** – When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member; and
- **Sustained** – When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

These are appropriate definitions for the four disposition categories and are consistent with standard law enforcement practice. Since complaints that are investigated by IA are documented in

a separate module of EPD's RMS, the team examined the dispositions of the 82 complaints that were not sent to IA (i.e., investigated at the shift level) between 2016 and 2018. We observed that the classification of these dispositions was used inconsistently at times. In addition, 19 of the complaints (23%) did not include a formal disposition, and instead were simply listed as "closed". We also observed that 4 (5%) of the complaints were listed as "pending" and did not have a disposition. According to Professional Standards, these cases were likely closed, but the dispositions were not documented in the RMS.

Recommendation: *Both Professional Standards and captains who are reviewing investigative files must be trained to properly understand and apply the four disposition categories cited in section 1010.6.4 of EPD's Personnel Complaints policy. In addition, Professional Standards must document the disposition of each complaint in the complaint module of the RMS.*

Recommendation: *Based on the complaint data, it appeared that there was a single disposition for each complaint, as opposed to a disposition for each specific allegation within a complaint. EPD should ensure that each allegation within a complaint receives a separate disposition.*

Figure 25 shows the percentage of complaints by disposition. 46% were unfounded, 12% were exonerated, 14% were sustained, and 0% were not sustained. In the team's experience, this number of unfounded complaints appears high. Based on a review of some of the narratives associated with complaints that were unfounded, it appears this disposition category is not being used consistently. In particular, there appeared to be some confusion between "unfounded" and "not sustained". As recommended above, it is important that captains are trained on the appropriate application of the disposition categories.

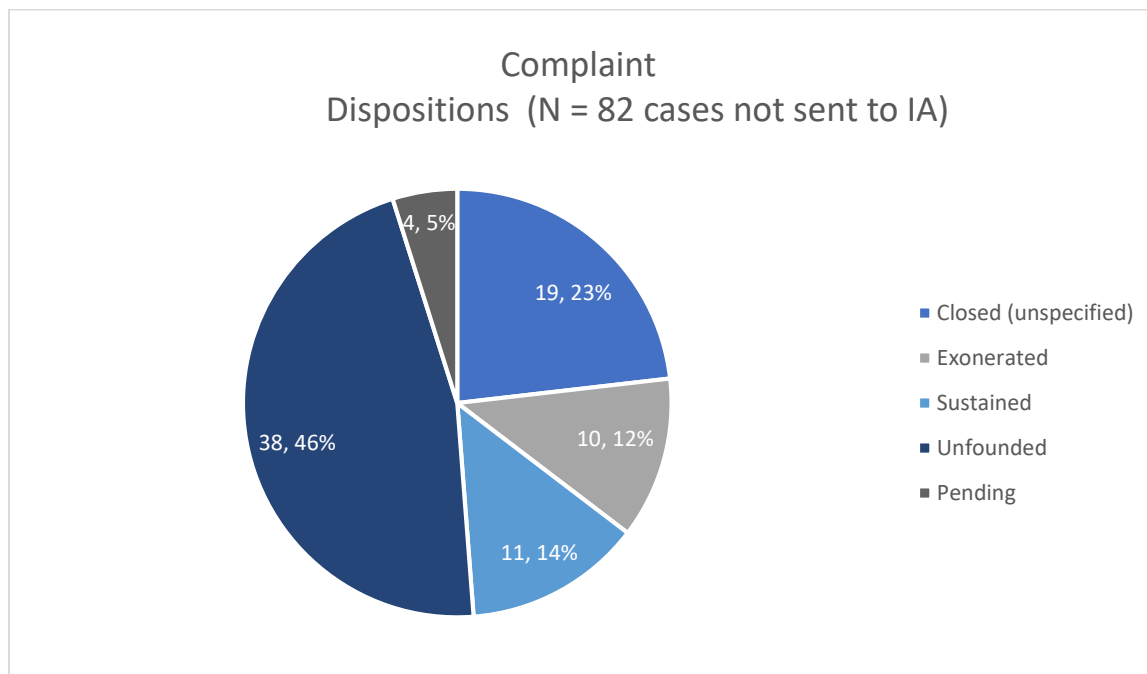


Figure 25

Length of Investigation

EPD's RMS data contains a variable documenting the date at which a complaint was either closed or sent to IA. The team used this information to calculate the length of a complaint investigation for cases investigated at the shift level, as well as the length of time before a complaint was sent to IA, for those investigated at the IA level. For complaints that were investigated at the shift level (N=78), the mean number of days before closure was 81, and the median number of days was 43. The time until complaint closure ranged between 0 and 338 days over the three-year period. For the complaints that were sent to IA (N=26), the mean number of days before being sent to IA was 8, and the median number of days was 4. The number of days between when a complaint was received and when it was sent to IA ranged between 0 and 49 over the three-year period.

Recommendation: *As stated on page 43, the team recommends that Internal Affairs investigations be completed within 90 days of when the complaint is received, regardless of whether they are handled by Professional Standards or at the shift level.*

Recommendation: *Complaints that are to be investigated by Professional Standards should be "sent to IA" immediately. There should not be a substantial time delay before complaints are forwarded to IA. This issue should be addressed in training for Professional Standards personnel.*

Review of Internal Affairs Case Files

Report Structure

As part of the review of complaints against EPD personnel, the project team examined Internal Affairs investigative reports generated between 2016 and 2018 (38 total investigations). The Professional Standards (PS) reports were all similar in structure, and were written in a format resembling an inter-office correspondence from the PS investigator to the Chief of Police. The PS reports included the following sections:

- Date,
- Purpose of the report, such as the closure of the case and the applicable case number,
- The allegation(s),
- The officer(s) involved,
- Administrative, or if relevant, criminal violations,
- Involved persons,
- Complaint summary,
- Investigative summary,
- Evidence, and
- Recommendations regarding charges.

Although generally speaking the PS reports contained adequate information to understand the complaints and subsequent investigations, the PS reports were written in bullet format, which may not describe the investigative findings and recommendations as clearly as regular prose. A bullet format is typically used to identify key points. PS reports should represent a detailed account of the complaint, investigation, and subsequent findings.

As discussed previously, reports for complaints investigated by field supervisors were completed in EPD's RMS "Citizen Complaint" section. The supervisory documentation found in the department's RMS "Citizen Complaint" section typically lacked the detail found in PS reports. It is important that investigations of all complaints, whether handled by IA or a field supervisor, are thoroughly documented.

EPD's new Personnel Complaints policy, Policy 1010 effective 3/14/2019, describes a format for all investigations of personnel complaints in section 1010.6.3. The format includes the following sections:

- Introduction,
- Synopsis,
- Summary,
- Evidence,
- Conclusion, and
- Exhibits.

This format is sufficient for most personnel complaint investigative reports, and should be used by ALL supervisors including those assigned to patrol and investigations. This will provide consistency in the investigative process. The policy also describes the information that should be included in each section listed above. Investigators handling complaints against personnel must ensure each section of their report is thorough, complete, and comprehensive. These investigations would be best completed following an investigative timeline using a traditional paragraph format. Utilizing a consistent format and process in all reports will help ensure fairness, proper content, and quality control.³⁵

Recommendation: *EPD should require that ALL personnel complaint investigative reports be completed utilizing the format described in Policy 1010 section 1010.6.3. Narratives should also be in paragraph, as opposed to bulleted format. EPD must also ensure that ALL completed personnel complaints are reviewed by the PS lieutenant for consistency, thoroughness, and quality control. The PS lieutenant must ensure reports are logically organized, clear, precise, and free of bias or opinion.*

Recommendation: *EPD could consider working with its RMS vendor to incorporate the appropriate report sections outlined in Policy 1010 into its RMS. This would help to remind supervisors and Professional Standards of the components of a thorough report.*

Recommendation: *EPD should provide training for Professional Standards and supervisors in the proper completion of complaint investigative reports.*

Dispositions

Based on the team's review of IA case files, it appears that EPD lacks a consistent process for applying the four disposition categories outlined in Policy 1010 (unfounded, exonerated, not sustained, and sustained). For example, we identified instances in which cases were closed but no particular disposition was applied, in addition to cases that were closed due to the officer having resigned, or due to a complainant being "uncooperative". As discussed above, EPD must ensure that Professional Standards and supervisors who are responsible for investigating complaints have a thorough understanding of how

³⁵ Community Oriented Policing Services (COPS). "Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice." <https://cops.usdoj.gov/RIC/Publications/cops-p164-pub.pdf> pg.36

to appropriately apply these disposition categories. EPD should provide training to Professional Standards and supervisors on the disposition categories.

Recommendation: *Even if an officer resigns, a complaint should be investigated as if the employee were still employed.³⁶ In addition, a complainant being “uncooperative” is not an appropriate reason to close a case. EPD should ensure that all cases are closed under one of the four disposition categories outlined in policy.*

Recommendation: *EPD should implement a quality assurance mechanism to ensure both complaint and IA investigations are thorough and that dispositions are applied appropriately. EPD could consider adopting an external police oversight mechanism such as an independent auditor to conduct a review of all internal affairs investigations on an annual basis.*

Disciplinary Process

During interviews with EPD personnel, the team heard that there is a lack of clarity surrounding the disciplinary process, and that discipline appears to be inconsistent. Although supervisors are expected to handle lower level complaints, interviews with EPD lieutenants revealed that they do not have the authority to levy discipline.

There also appeared to be inconsistencies in the way that counseling, training, and mentoring are documented. For example, if an employee receives counseling, this is documented in the employee module of the RMS, rather than the complaint module. This means that there is no way to track in the complaint module whether an individual has received counseling for a certain offense on repeated occasions.

Recommendation: *Counseling and training should be documented in the complaint module of the RMS, in addition to the employee module. This will ensure any repeat issues for which officers have received counseling and training are identified.*

Progressive Discipline

The purpose of discipline is to modify an employee’s unacceptable behavior. Progressive discipline is the process of administering progressively more severe punishment against an employee for their misconduct. When considering discipline, the agency must consider the seriousness of the misconduct, the officer’s work performance, past misconduct, and the impact the misconduct places on the agency. In addition, disciplinary action must be administered in a fair and consistent manner. Citizens expect that officers will be held accountable for misconduct. This process plays a key role in ensuring discipline is fair to the officer, the agency, and the complainant. Creating an agency environment with proper training, accountability, and disciplinary processes is critical for handling police misconduct.

As part of the personnel complaint review process, the team conducted a review of discipline following sustained violations of misconduct. Overall, it was difficult to evaluate how progressive discipline is used throughout EPD due to the limited number of investigations that resulted in a sustained complaint during the period of review.

³⁶ Ibid

EPD's current Personnel Complaints Policy 1010 briefly lists disciplinary actions including suspension, demotion, and termination in section 1010.3.3. But this section does not describe these actions or the disciplinary process in any detail. The policy merely states that the Services Captain should ensure the types of punitive measures that may be used are "made known to all EPD members". Additional sections nearing the end of the policy explain the pre-discipline process, the review and hearing process, and post discipline appeal.

To ensure the discipline process is consistent and equitable, the steps to a progressive discipline process should be included and explained in agency policy.

Recommendation: *EPD should add a section to the Personnel Complaints Policy 1010 that describes the progressive discipline process. It should state that discipline will be equitably administered with the intent to change unacceptable behavior and deter future misconduct. In addition, it should state that discipline will be based on the seriousness of the misconduct, the officer's work performance, past misconduct, and the impact the misconduct places on the agency. The steps to a progressive disciplinary system can be described as follows:*

- 1) Documented Reprimand:*** *The documented reprimand is the lowest level of progressive discipline which documents employee misconduct that warrants punitive action.*
- 2) Employee Reassignment:*** *Employee reassignment may be necessary when a pattern of continued misconduct occurs that warrants more than a documented reprimand.*
- 3) Suspension/Demotion:*** *The suspension or demotion of an employee may be appropriate when the misconduct is a deliberate and flagrant violation of agency policy or law; or represents a continued pattern of disregard for agency policy or law, and prior disciplinary action did not deter the misconduct.*
- 4) Termination:*** *Termination is appropriate if an employee's repeated pattern of misconduct is not corrected or if the actions of the employee are so egregious that the misconduct warrants employee termination.*

Recommendation: *In addition to adding information on the progressive discipline process identified above, EPD should develop a penalty matrix system that is fair and consistent. Many agencies use these systems to specify the nature of offenses or policy violations and associate them with a specific penalty or range of discipline. A discipline matrix ensures that expectations regarding discipline are clear and ensures predictable penalties for misconduct.³⁷ Some examples of discipline matrices that are used in other agencies can be found in Appendices B and C.*

³⁷ Community Oriented Policing Services (COPS). "Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice." <https://cops.usdoj.gov/RIC/Publications/cops-p164-pub.pdf>

SECTION V. VEHICLE PURSUITS

Methodology

In the wake of two fatal vehicle pursuits in June, 2019, City officials raised concerns regarding EPD's policies and practices pertaining to vehicle pursuits. Thus, though outside the original scope of work, the project team decided to conduct an analysis of data exported from the vehicle pursuit section of EPD's RMS.

From the RMS export we analyzed 149 vehicle pursuits involving EPD personnel conducted between January 1, 2016 and December 31, 2018. 144 of these pursuits were initiated by EPD; the rest were initiated by other law enforcement agencies.

Findings

Time and Place

The number of pursuits remained fairly consistent over the three-year period (Figure 26).

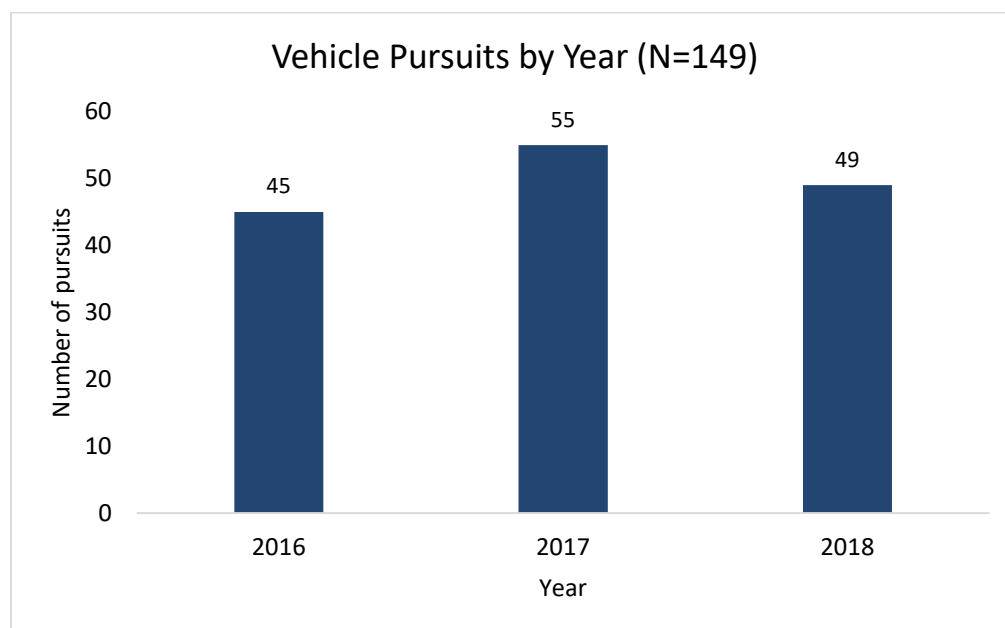


Figure 26.

As with use-of-force incidents, the majority of pursuits occurred during Shifts 2 and 3 (Figure 27). As described above, this is not surprising given that the afternoon shift will typically experience a higher call volume, while the midnight shift will often have more serious types of calls that are more likely to result in a potential pursuit or use of force.

Vehicle Pursuits by Patrol Shift (N=149)

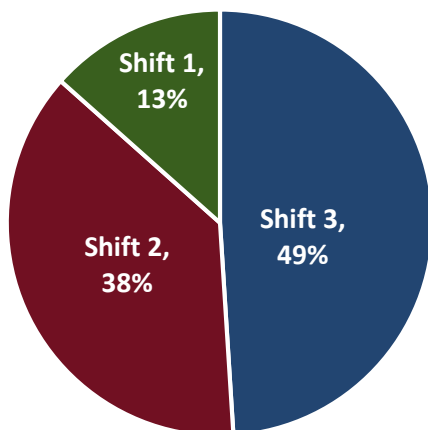


Figure 27. Shift 1 is from 7:00 AM to 3:00 PM. Shift 2 is from 3:00 PM to 11:00 PM. Shift 3 is from 11:00 PM to 7:00 AM.

With regards to geography, vehicle pursuits mirror use-of-force incidents; a higher percentage began in Areas A (33%) and B (36%), as compared to Area C (24%)(Figure 28). We did not drill down to the zone level because few pursuits in the RMS data contained that information.

Vehicle Pursuits by Area of Initiation (N = 149)

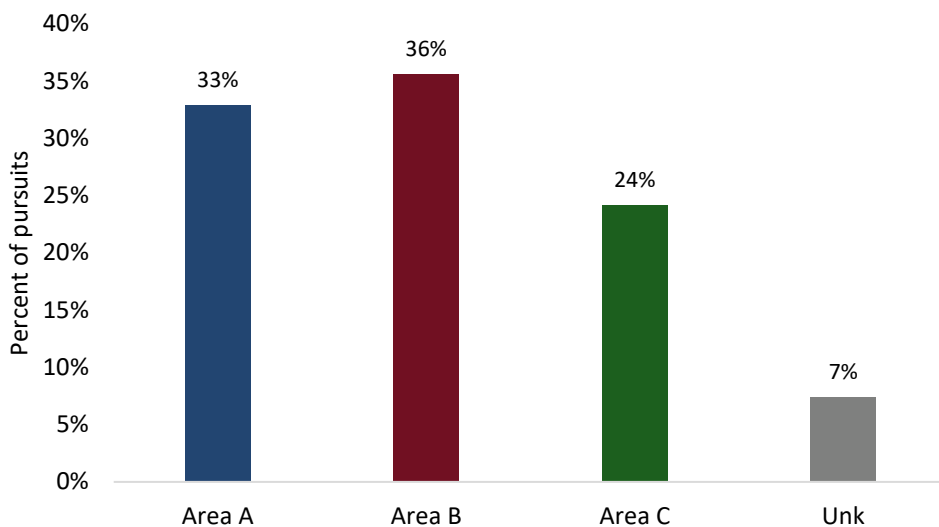


Figure 28

Officers Involved

We identified 53 officers who initiated a pursuit during the period under review. As with use of force, certain officers initiated a disproportionate number of pursuits. The top two officers with the highest number of pursuits initiated 21% of vehicle pursuits, the top four officers initiated 34% of vehicle pursuits, and the top eight officers initiated 50% of vehicle pursuits over the three-year period.

It is important to note that officers who initiate vehicle pursuits more often than their peers are not necessarily acting inappropriately, as a variety of factors beyond the control of officers can influence the frequency with which they initiate pursuits. These include, but are not limited to, shift, area, and division. For example, an officer who worked patrol in a busy area at night will probably initiate pursuits more frequently than an officer who worked day shift in a slower area. However, the actions of the officers who initiate a disproportionate number of pursuits should be analyzed, to ensure that departures from appropriate norms of conduct are recognized and appropriately dealt with.

Recommendation: *EPD should periodically analyze RMS data to identify officers who initiate a disproportionate number of pursuits. These officers' conduct should be scrutinized and appropriate action (e.g. counseling, training, formal discipline) should be taken, if necessary.*

Reason for Pursuits

The team found that more than three fifths (62%) of pursuits stemmed from traffic offenses (other than operating while intoxicated [OWI]) (Figure 29). The remaining incidents were due to the occupant being suspected of a crime (11%), OWI (8%), a felony (8%), or a misdemeanor (6%).

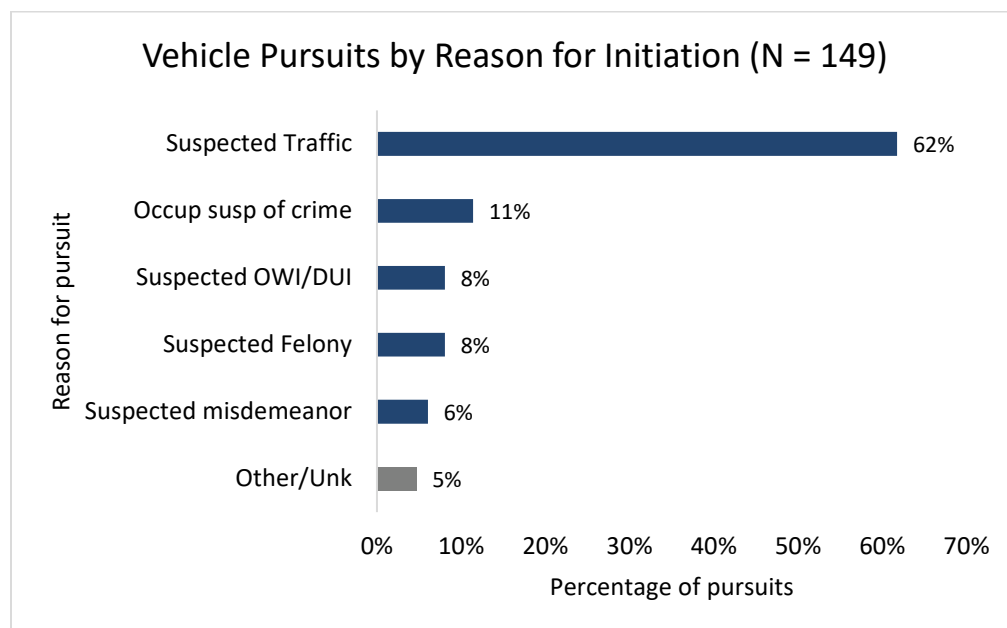


Figure 29.

Best practice in policing policy across the country tends to restrict vehicle pursuits to situations in which the subject is suspected of a violent felony. This is because oftentimes, the risk of initiating a high-speed

chase may outweigh the risk posed by the driver. Examples of agencies with strong vehicle pursuit policies include: Baltimore City Police Department, New Orleans Police Department, Minneapolis Police Department, and St. Paul (MN) Police Department.

Recommendation: *EPD should discourage if not forbid vehicle pursuits when the only known offense(s) are traffic-related, and modify its current pursuit policy to limit pursuits to crimes of violence. The safety of the public, officers, and subjects must be considered prior to initiating a vehicle pursuit. DUI pursuits should be limited to cases in which the driver is operating a vehicle in a dangerous manner and the danger posed by the driver clearly outweighs the risk of initiating a high-speed chase.*

EPD Action Taken: *EPD is currently in the process of updating its pursuit policy to limit vehicle pursuits to crimes of violence, in accordance with this recommendation.*

Damage and Injuries

Accidents

More than a quarter (28%) of vehicle pursuits during the time period under review resulted in an accident (Figure 30).

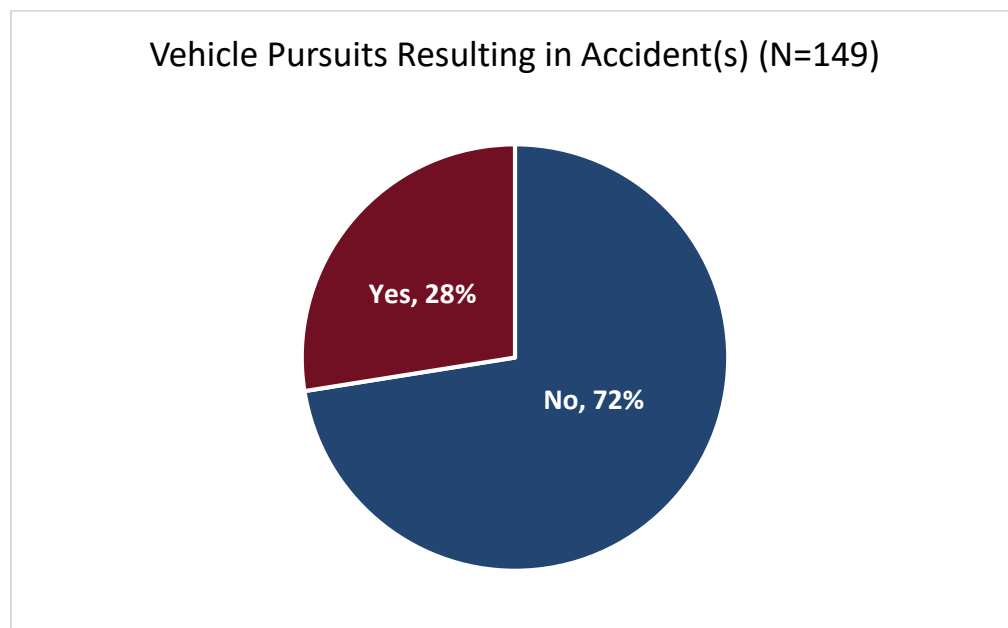


Figure 30

Injuries

14% of vehicle pursuits resulted in an injury to at least one officer, subject, or bystander (Figure 31).

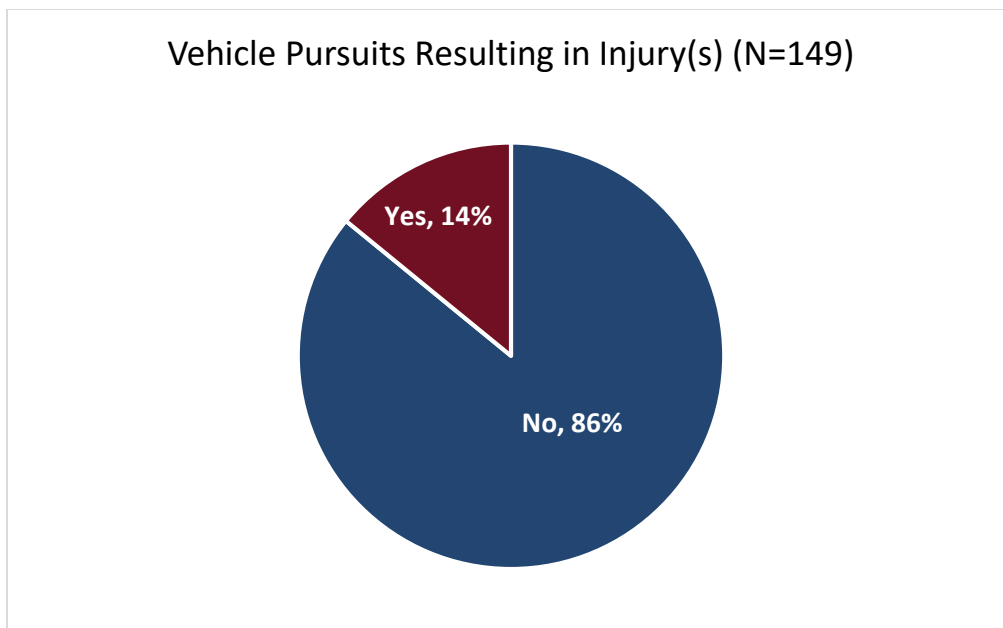


Figure 31.

Vehicle pursuits did not result in any fatalities during this timeframe. However, they resulted in \$439,450 in damage to vehicles and other property between 2016 and 2018; an average of about \$146,483.33 per year. Note that this is based on preliminary estimates entered into the RMS and may be significantly higher or lower from final determined costs. Further, a series of pursuits that occurred during our research period in 2019, two of which resulted in death, led to the Mayor's request that we analyze the pursuit policy.

Dynamics

Area/Roadway Type

More than half (52%) of pursuits occurred in residential areas. More than a quarter (29%) occurred in urban areas (Figure 32). Pursuits conducted in such areas are more likely to result in damage to person or property than those occurring in more rural areas where there is less traffic and where there are fewer pedestrians.

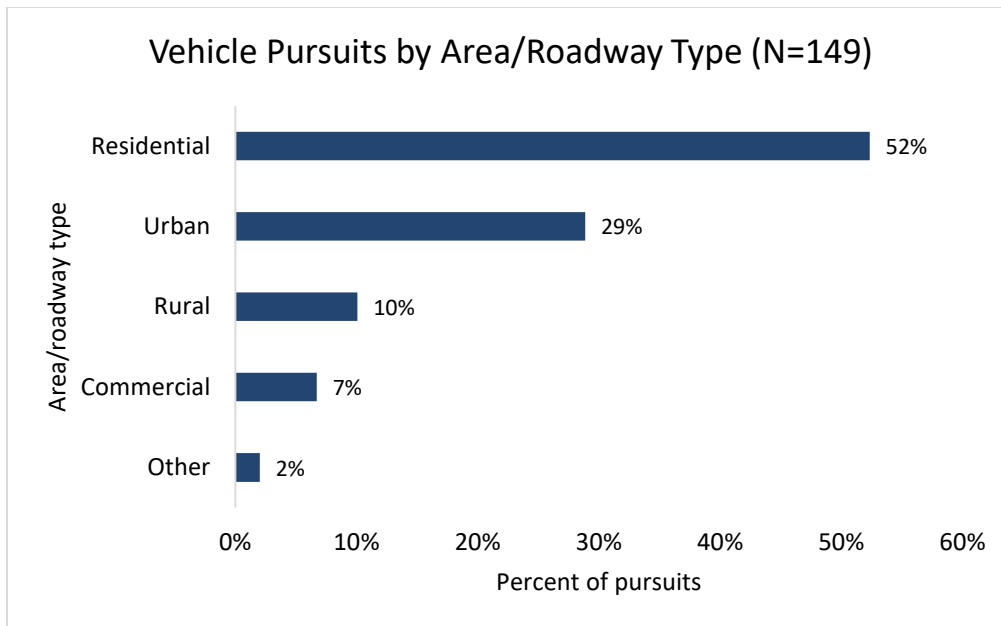


Figure 32.

Top Speed

The average reported top speed during vehicle pursuits was 66 MPH³⁸. Nearly two fifths (37%) of pursuits had a top speed of 75 MPH or greater. More than a fifth (21%) had a top speed of 90 MPH or greater (Figure 33). Pursuits that were listed as having a top speed of 0 MPH or were left blank are labeled as “unknown”. The fact that over 80% of pursuits were conducted in urban and residential areas, and over 50% were conducted at speeds of 60 miles per hour or higher, poses a potential risk for pursuits to result in accident or injury (see Figures 34 and 35).

³⁸ Several pursuits in the data had a listed top speed of 0 MPH. These were excluded from the analysis.

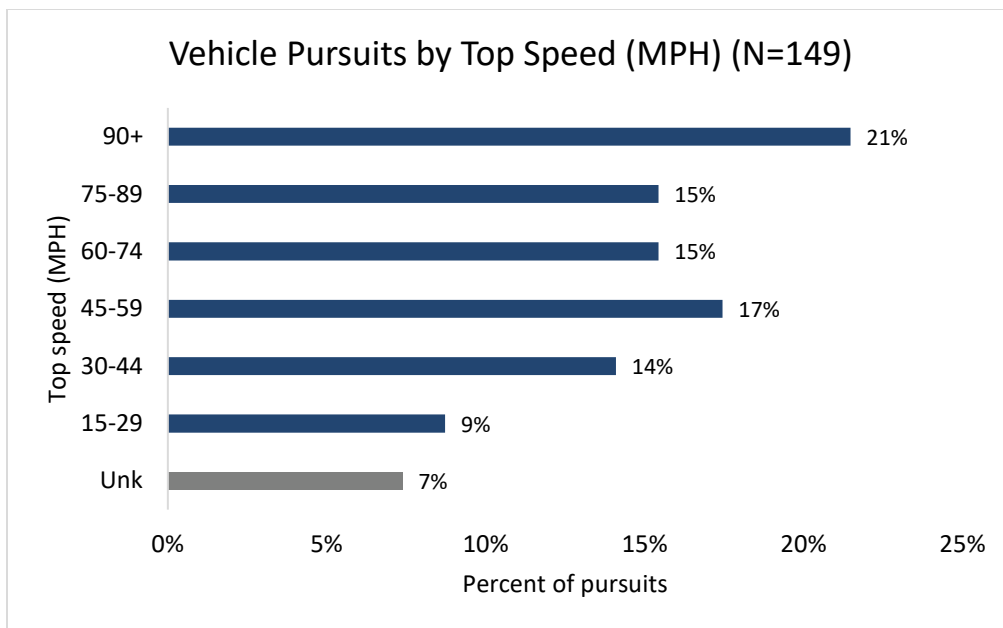


Figure 33.

Figures 34 and 35 show the percentage of pursuits that resulted in accidents and injuries by top speed. Unsurprisingly, the pursuits with higher top speeds resulted in a higher percentage of accidents and injuries than pursuits with lower top speeds. Pursuits in which the top speed was listed as zero or unknown were excluded from the analysis.

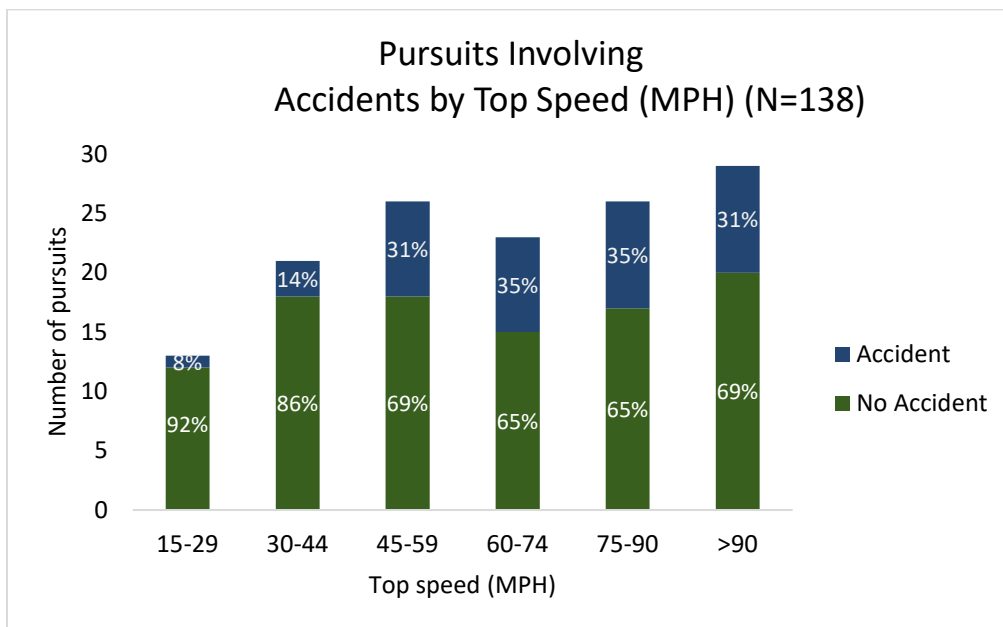


Figure 34

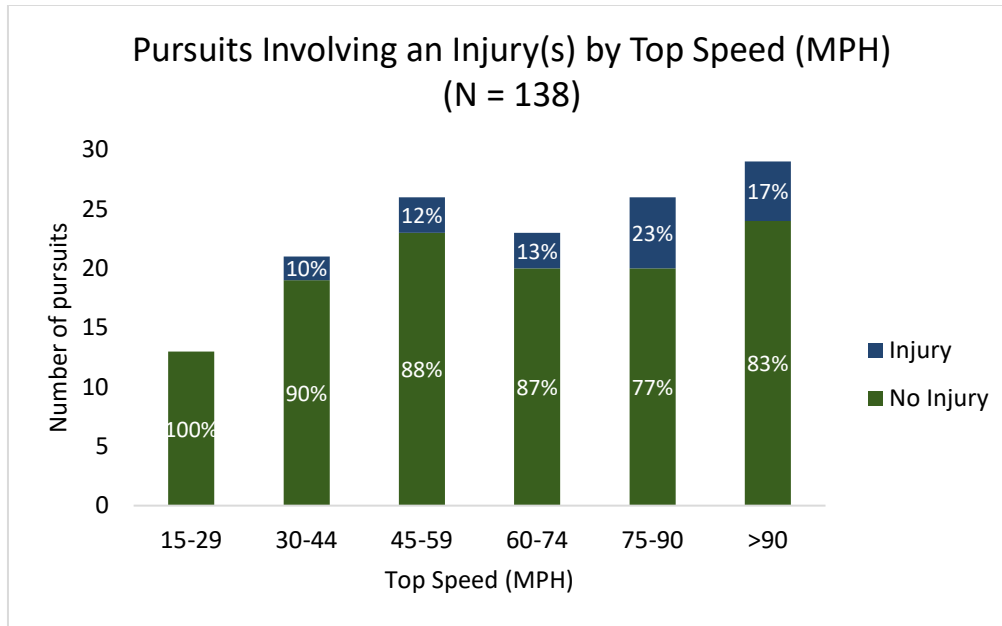


Figure 35.

Distance

The average distance travelled during vehicle pursuits was 3.84 miles³⁹. Most pursuits were for short distances: 58% travelled less than two miles (Figure 36). Pursuits for which the distance traveled was listed as 0 miles or left blank are labeled “unknown”.

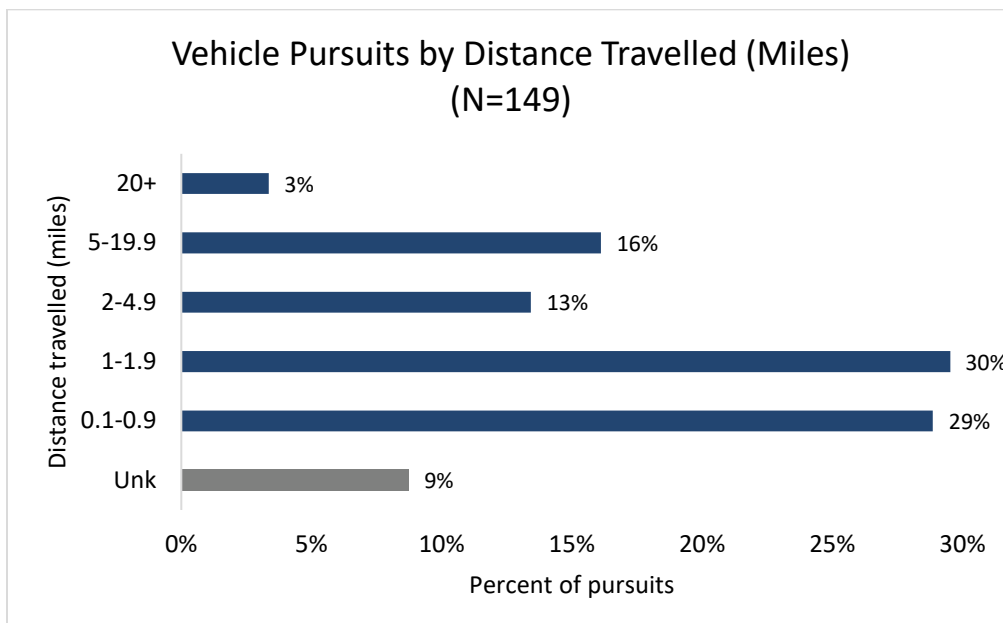


Figure 36.

³⁹ A number of the pursuits had a listed distance traveled of 0 miles. These were excluded from the analysis.

Foot Pursuits

35% of vehicle pursuits also involved a foot pursuit (Figure 37).

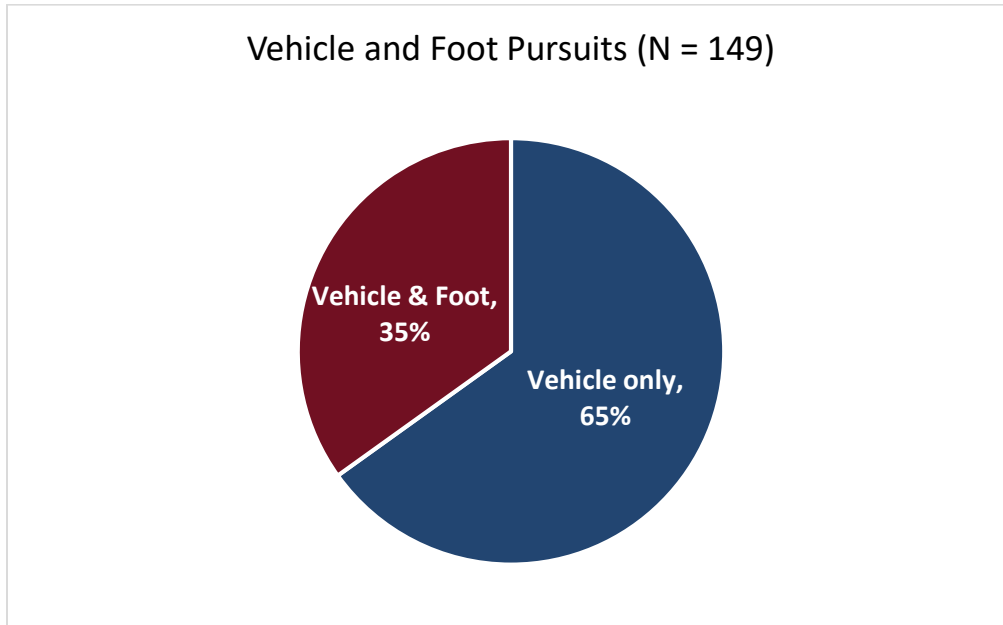


Figure 37.

Use of Force

38% of vehicle pursuits resulted in a use of force. Figure 38 shows the number of vehicle/foot pursuits, as well as the number of vehicle only pursuits that resulted in a use of force. Interestingly, a higher percentage (42%) of vehicle only pursuits resulted in a use of force, as compared to the percentage of vehicle/foot pursuits (31%) that resulted in a use of force. (Figure 38). Upon reviewing the data, it appears that many of the vehicle only pursuits that resulted in a use of force were for felony stops (i.e., the force used was the display of a firearm), which likely explains this finding.

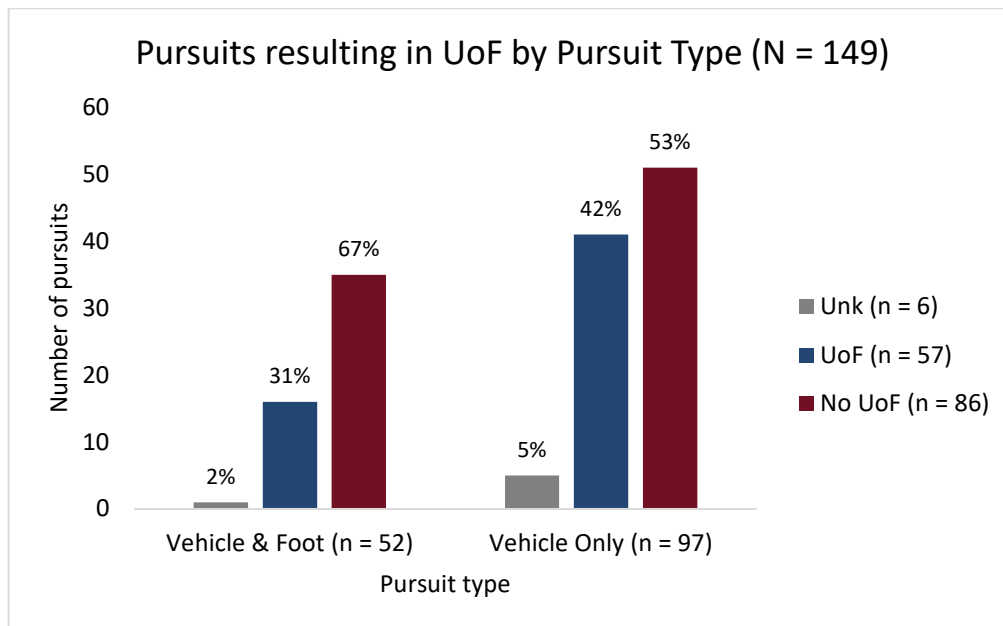


Figure 38.

Weather

Most (82%) of pursuits took place in clear conditions (Figure 39).

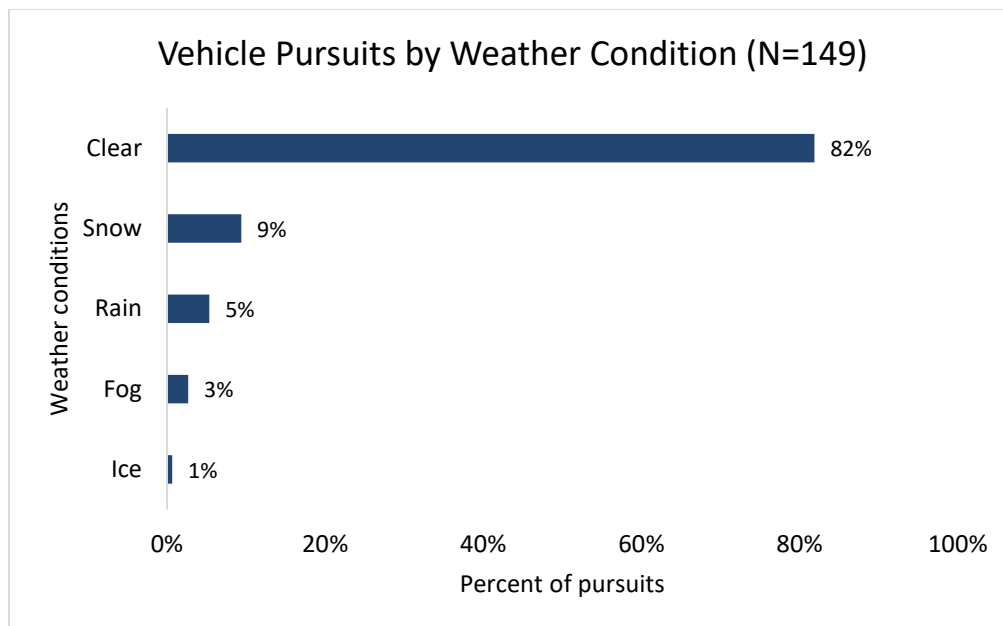


Figure 39.

Termination of Pursuits

Only 8% of pursuits were terminated by EPD; 5% by officers, and 3% by supervisors. 80% were terminated by the driver, and 5% were terminated for some other reason (Figure 40). Based on the team's experience, the percentage of pursuits terminated by a supervisor appears low. Supervisors should be monitoring pursuits to ensure they fall within policy, and should typically be more involved in the decision making process to terminate pursuits.

Recommendation: *EPD should ensure that supervisors are closely monitoring vehicle pursuits to ensure they are in accordance with policy and that the benefits of the pursuit outweigh the risks. If a supervisor is concerned that the benefit of a pursuit does not outweigh the risk, they should instruct the officer to terminate the pursuit.*

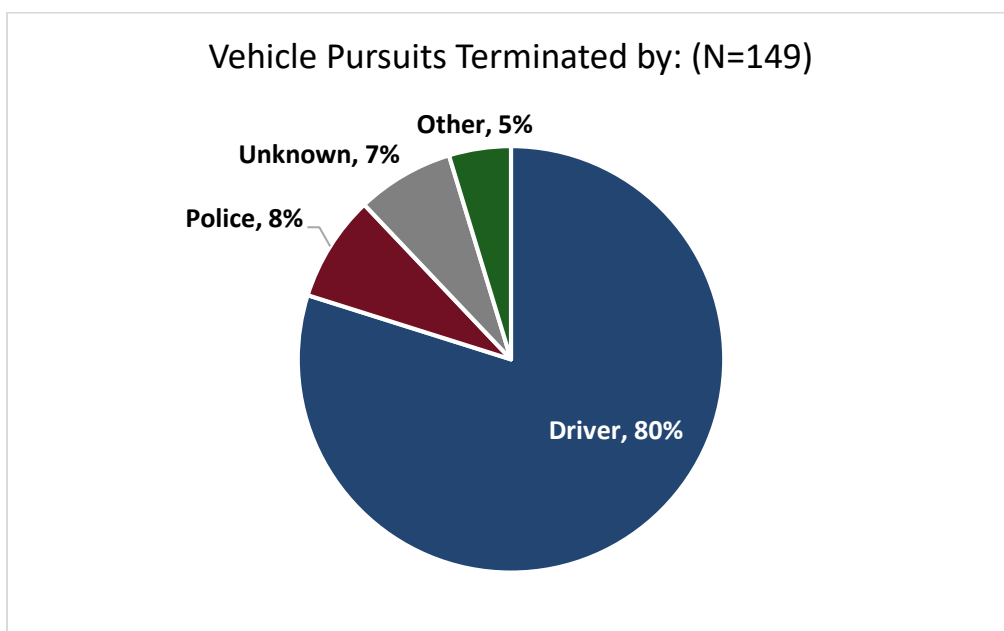


Figure 40.

SECTION VI: ACCOUNTABILITY

Feedback from Community Members

As a part of the Krieg DeVault/PERF team's review of the EPD, it sought information from a diverse group of members of the community, in multiple meetings with focus groups and individuals. Though it was clear that everyone with whom the team met wanted to help the EPD achieve improvements, and wished to help develop a closer relationship between the EPD and members of the Elkhart community, certain themes arose during the course of these conversations in the form of constructive criticism. We believe this information will be helpful to the leadership of EPD in terms of improving their relationship with the community at large.

In order to encourage frank discussion, the team made it clear that no comments made in these interviews would be attributed to any individual or organization.

The themes that emerged from the discussions included:

Trust Deficit

A concern was expressed by multiple participants that the trust of the community in EPD is in question at this point in time, and further that EPD officers do not appear to demonstrate through their actions that they understand and take ownership of what is perceived by some members of the community to be a problem for the police department. Not everyone in the community feels equally benefited by the vibrancy of the city and investments made in it by city leadership.

The current lack of trust in the department by at least some segments of the community appears to stem from certain perceptions, including the following:

- **Misconduct by various officers** – The conduct cited by participants included:
 - Drunk driving arrests of officers
 - Firearm discharge by officers while intoxicated
 - Officers that are abusive to residents (the video of the confrontation in the lockup from November 2018 was cited as supportive of this narrative, but it was not the only basis for the perception)
 - Conduct that appears reflective of racial bias and favoritism
- **Inconsistent discipline**, and/or promotions, of officers who have engaged in misconduct, including criminal misconduct such as driving under the influence of alcohol
- **Malfunctioning body cameras** at critical times – It was mentioned that there have been incidents in which the officers' body cameras were reported not to have been working, or not to have been turned on
- **Absence of community policing** – Though some years ago the EPD engaged in community policing, enabling officers and community members to know and develop trust with one another, community policing either no longer is employed by the department or has been severely curtailed

The civilian interviewees suggested that community trust, once lost, is difficult to regain, and that significant proactive effort will be needed to rebuild the trust of the community in the EPD. They

proposed that building trust must include positive interactions with the community, rather than interacting with members of the public only during traffic stops or investigations. It was suggested that EPD, beginning with the chief, needs to be more public-facing and intentional about building relationships within the community. (See “Communication,” below.) The perception of those interviewed was that EPD as an organization has not historically made this a priority; in fact, some felt that EPD has instead, in recent years, re-trenched and pulled inward. They are not aware of any citizens’ advisory group to the chief – the type of group that could help him identify issues of concern to the community and determine how best to address them (see recommendation on page 77-78). They indicated that EPD does have a Citizens Academy, but the perception of at least some is that it is used for the primary purpose of justifying officers’ behavior, rather than providing information about the mission of EPD and how officers and leadership strive to achieve that mission. Further, some suggested that the Citizens Academy might be more effective in generating community trust if it were to hold some meetings outside of EPD, in the community it serves.

Leadership Gap

Much of the perceived trust deficit described by participants was attributed by them to a lack of accountability and consistency on the part of past leadership of the department. The promotion process is perceived as political; to some members of the public, there appears to have been a lack of decisiveness and communication on the part of police leadership over a number of years.

Participants further indicated that the Police Merit Commission and the Board of Public Safety are perceived as less effective than they might be, and not fully trained in their duties and responsibilities. It was suggested that improved professional development provided to the members of these entities would improve their performance in their official roles and, among other things, inject greater consistency into the disciplinary processes.

Participants indicated that it is not easy to file a complaint against the police department. According to them, there is little information available to the public as to how to file a complaint; very little information is provided on the department’s website. Generally, citizens are required to appear in person, call, or send an e-mail. See Section IV of this report for additional information and recommendations regarding the complaint process.

Culture of EPD

There were several comments about the culture of EPD. Some long-time residents indicated that, since at least the 1980s, the culture of the organization, at least as perceived by African-American members of the community, has contributed to the lack of trust on the part of those members of the community in the department. These individuals remembered a point at which the City leadership brought in a chief from outside the department who tried for four years to change the culture; but they indicated that when he left, the department reverted to “business as usual.” Further, it was suggested that the culture of the South Bend and Goshen police departments are completely different than that of EPD, in that they are more focused on the development of relationships with members of the community.

An example of what is **perceived** as a culture antithetical to African-Americans included comments suggesting that the percentage of African-Americans arrested and jailed is disproportionate to their representation in the community.

It was pointed out that Elkhart is a high poverty area: participants suggested that 75% of students in the public school system are on the free or reduced lunch program per federal government guidelines. Participants seemed to suggest that a disconnect between police and lower-income populations may contribute to the perceived gap in understanding and trust between the EPD and some members of the community.

Suggestions for improvement included:

- Recruitment of young African-American potential officers from the south side of the city
- Cultural training for the police
 - Cultural competence and diversity training were suggested

See our similar recommendation regarding implicit bias and cultural awareness training in Section II of this report. Such training would increase officer awareness of cultural issues and go a long way toward erasing perceptions of bias in the community.

Communications Issues

Chief of Police Chris Snyder is perceived positively in the community, which provides a tremendous opportunity for the chief to assist in improving EPD's relationship with local residents. However, participants felt that the chief cannot carry this burden by himself, and that he will need the support of other EPD leadership in reaching out. Those leaders who assist in this effort will need to be individuals who are trusted by residents of the community, as is the chief. Generally, it is perceived by those interviewed that EPD as an organization does not see community outreach as a high priority.

The participants indicated that the chief has good relationships in the community, and knows how to talk to families. It was suggested that the chief go into the community regularly to speak and to listen to the concerns of residents.

In the vein of communications, it was also expressed that there is value in checking in regularly with crime victims during the pendency of their cases. The inference was that this does not currently occur in many cases.

Concerns Specific to the Hispanic Community

Based on interviews conducted with community members, there is a perception on the part of Hispanics that they are disproportionately stopped by EPD. Examples provided by participants included:

- Hispanic residents are sometimes stopped and questioned while simply walking down the street, and asked for green cards
- Police pull over Hispanic drivers for an infraction such as an illegal lane change; if they have no driver's license, they are arrested and jailed
 - If they are then found to be undocumented, and are held on an immigration violation, they "lose everything"

It was suggested that Hispanics do not feel welcome in Elkhart, and "don't want to stay here." One factor in this attitude may be that, according to the participants, a significant percentage of the Elkhart

alien population is estimated to be undocumented. Further, EPD's policy on immigration issues is unclear to residents of non-U.S. ethnic origin, which according to those interviewed leads to discomfort with police and underreporting of crimes. For example, undocumented aliens tend to be fearful of reporting a crime such as domestic violence, based on a fear of deportation. The situation in Elkhart was compared unfavorably in this regard with that of Goshen, where, according to participants, there is a clear policy understood by the community; there is a Latino advisory council in place, and a "welcoming committee" for aliens.

The information about what is apparently done in other communities in Indiana, such as Goshen, may provide useful guidance for EPD in terms of improving its relationship with the Hispanic community, as well as increasing the reporting of crimes to the police and cooperation by Hispanic residents in the solving of cases and prosecution of transgressors.

Given these concerns, it is important that EPD establish a culture of transparency and accountability in order to improve relationships with the community.

Recommendation: *The Chief of Police should appoint an advisory group of citizens to facilitate the flow of information from the community to EPD regarding what actions or inactions on the part of the Department are injurious to its relationship to the community (see page 77-78 for further information).*

Recommendation: *EPD should consider conducting community surveys to get a more accurate view of community sentiments regarding EPD and to inform the Department regarding how best to improve its relationships with members of the community.*

External Agency Oversight

External oversight of the internal affairs process plays a key role in promoting police accountability. Nearly all large police departments in the U.S. utilize some form of this oversight, which often involves an independent review of the citizen complaint process and internal affairs investigations.⁴⁰ Although external oversight varies across jurisdictions, in most places, the oversight body reviews internal investigation files compiled by the police department and makes recommendations about the disposition of the case.⁴¹ The final authority over the outcome remains with the police chief.⁴²

External oversight is important for helping to ensure that complaints are investigated thoroughly and fairly, and that the investigative findings and dispositions are appropriate.⁴³ Importantly, external oversight can also help identify broader organizational problems, such as gaps in policy, training, and supervision that may contribute to the actions that are the subject of a complaint.⁴⁴

In addition, external oversight of serious use-of-force incidents is important to identify necessary improvements to training and other agency practices. In addition to establishing a Critical Incident

⁴⁰ Samuel Walker & Carol A. Archbold (2014). *The New World of Police Accountability* (Second Edition). Thousand Oaks, CA: SAGE Publications, Inc.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

Review Board, the team recommends that EPD adopt an external oversight mechanism to review serious uses of force, including cases that result in injury, the use of less lethal force, officer-involved shootings, and in custody deaths.

Recommendation: *EPD should adopt an in-house external oversight mechanism, such as an ombudsman or a retired judge or prosecutor, to conduct a review of all internal affairs investigations and serious uses of force. For example, Mesa AZ Police Department hired a former Maricopa County attorney to conduct a similar review for the agency. This review should be conducted twice a year.*

Recommendation: *The internal oversight body should prepare an annual report describing its review of the serious use-of-force incidents complaint data, and any conclusions or recommendations regarding changes to current policies and practices.*

Early Intervention System (EIS)

Over the past 25 years, the use of an Early Intervention System (EIS),⁴⁵ especially for large and medium-size police agencies, has emerged as a widespread practice in police personnel management.⁴⁶ The underlying concept of an EIS is that serious incidents of police officer misconduct often do not erupt unexpectedly. Rather, such significant events are often preceded by a number of minor past incidents or concerning patterns of behavior. An EIS is designed to help agencies identify these potential areas of concern and address them through training, counseling, or other non-punitive measures before more serious misconduct occurs.

How an EIS Works

An EIS generally consists of four components:⁴⁷

- ***Performance metrics or variables*** that are related to incidents and behaviors, and that could be potential indicators of future misconduct or performance problems. Examples include citizen complaints against the officer, uses of force, lawsuits against the officer, the officer's performance evaluations, supervisory actions against the officer, excessive sick leave, etc. Some agencies' EIS systems track as few as a half-dozen indicators, while other agencies may track 20 or more data points.
- The ***threshold levels for these variables*** to identify, or flag, officers with possible performance concerns. When a threshold is met, an alert is "triggered" in the system and the officer's supervisor is notified. For example, if "complaints against an officer" is a variable included in the

⁴⁵ In the early stages of these systems' development, they were commonly referred to as Early Warning Systems (EWS). The use of the word "warning" connoted to many officers a punitive, disciplinary potential to these systems, which was counterproductive if the goal is to prevent problems from occurring. Thus, the word "Intervention" came into use as a replacement. Some entities refer to these as Early Identification and Intervention Systems. This report will use Early Intervention Systems (EIS) as the generic term.

⁴⁶ Samuel Walker (2005). *The New World of Police Accountability*. Thousand Oaks, CA: SAGE Publications, Inc.

⁴⁷ The John F. Finn Institute for Public Safety, Inc. (2015). *Features of Contemporary Early Intervention Systems: The State of the Art*. IACP 2015 Conference, Chicago, IL.

EIS, then NCPD must determine how many complaints must be filed, and in what time period, in order for the EIS alert to be triggered.

- *The **intervention** that the officer's supervisor will use to address the performance problems. Interventions are designed to be non-punitive and to help modify the officer's patterns of behavior, and they may include options such as additional training, counseling, or a change of assignment.*
- ***Follow-up monitoring** of the officer after the intervention is implemented.*

Based on interviews with EPD personnel, the team learned that EPD's RMS has an EIS function, but that the agency is not currently using this feature. EPD should consider utilizing this function to track and monitor potentially problematic trends, including officers who are frequently the subject of complaints.

Inspections

Routine internal inspections are an important accountability mechanism. Inspections can help to determine whether a department's procedures and policies are being properly implemented, whether resources are used wisely, and whether there are any deficiencies in areas such as training, morale, and supervision. Police department management will benefit from a comprehensive and robust inspections process. Inspections can examine areas such as EPD facilities, administration, files, information systems, personnel, operations, and reporting practices.

Recommendation: *EPD should institute periodic inspections to ensure the department is operating at peak efficiency and in compliance with established professional standards. Administrative inspections of each EPD component should occur at least once every three years as required by the Chief. Professional Standards could conduct these inspections and brief the appropriate commanding officer upon conclusion of the inspection, so that the commanding officer can undertake appropriate corrective action.*

Quality Assurance

In addition to conducting inspections, EPD's auditing process should include assessing the department's performance through follow-up with individuals who have had recent contact with EPD. Professional Standards personnel could conduct callbacks with a random sample of these individuals each year, and ask questions to assess police interactions with the public. Responses could be measured over time to gauge community perceptions of the EPD on an ongoing basis.

The following questions regarding police interactions can be used to measure perceived legitimacy, professionalism, and community satisfaction:

Please answer on a scale of 1 to 5, with 1 meaning you strongly disagree with the statement and 5 meaning you strongly agree with the statement:

- The officer seemed to genuinely care about the well-being of the community.
- The officer acted in a way that benefits the welfare of the residents.

- The officer listened to what I had to say/my side of the story.
- The officer explained his/her actions and decisions during the incident.
- The officer treated me with respect.
- During the interaction, the officer used law enforcement powers fairly and appropriately.
- During the interaction, the officer appeared to follow the law and rules.
- During the interaction, the officer used appropriate force and courteous language.
- I believe the officer did a good job performing his/her role.
- I am satisfied with how the officer conducted him/herself.
- I felt comfortable talking to the officer during the encounter.

Going forward, EPD could consider hiring additional civilian personnel for Professional Standards to perform this function.

Accountability to the Community

It is critically important that a police agency be accountable to the community it serves. There are a number of ways to build accountability into a department, including:

- Ensuring that the agency's actions are transparent,
- Soliciting input from the community regarding agency policies and practices, and
- Being responsive to the needs of the community and to feedback from the community about police department actions.

During this review, the Krieg DeVault/PERF team made several recommendations regarding steps that EPD could take to help strengthen its accountability to the community. These recommendations included civilian oversight of the IA process and serious uses of force, establishing a Chief's Advisory Committee (see below), and soliciting community feedback through satisfaction surveys. Fostering such a positive and transparent partnership will enhance communication with the community and help establish legitimacy for the EPD.

In addition to these initiatives, EPD should continue to explore ways to promote transparency regarding its policies and practices. In order to embrace a culture of transparency, EPD should make its policies and other department information available online so the public can access this information.

Recommendation: *EPD should make its policies, general orders, internal affairs statistics, and other information available on the department website for public review.*

Recommendation: *The Chief should create a "Chief's Advisory Committee" (CAC) comprised of 8 – 10 community and business leaders. These members could be selected with the assistance of the Mayor and other elected officials. Meetings could be monthly or quarterly, with the Chief sending out a CAC email or update on important matters or concerns. The meetings could also*

include another member of the command staff, but the focus should be on the relationship between the chief and the community.

EPD Action Taken: *The team shared this recommendation with EPD, and the chief has agreed to consider establishing such a committee. This will be an additional strategy to help improve the relationship between EPD and the community.*

Recommendation: *EPD is currently collecting a variety of data that will allow the department to monitor trends in use of force, vehicle pursuits, and other areas discussed in this report. These trends should be tracked on a regular basis to ensure that EPD actions are consistent with policy, and to identify any potential training needs. EPD should evaluate use of force and vehicle pursuit data on an annual basis, to ensure that any policy changes are being properly implemented. EPD could also consider publishing this data online to further promote transparency with the community.*

Officer Performance Measures

One way for a police agency to promote accountability is to regularly review and address employee performance issues. Regular performance assessments can help supervisors identify problems and take corrective action, such as recommending additional training or counseling.

Documenting Employee Performance

Performance assessments are important for agencies to ensure that information about an employee's strengths, as well as any challenges that should be addressed, are documented and can be shared among the employee's current and future supervisors.

To this end, some police agencies have implemented software programs that allow supervisors to document their observations regarding employee performance, which can then be shared with the employee and the employee's future supervisors if the employee is transferred or reassigned. With these programs, supervisors can note their feedback and observations directly in the system, employees can review and respond to the feedback, and the agency can define which personnel will have access to this information. It appears that EPD may already be documenting some of this information in the employee module of its RMS, but it is important to ensure that it is being documented on a consistent basis. These programs can also be used with EIS software to help supervisors proactively identify and address problems.

Recommendation: *EPD should establish a process for regularly reviewing and addressing employee performance. This could be done through EPD's employee module, or through the EIS feature of EPD's RMS.*

SECTION VII: CULTURE ASSESSMENT

An aspect of our charge was to conduct a “culture assessment” of EPD. In order to assess the culture of the department, we conducted a number of interviews. They included members of the City Council, members of the Board of Public Safety and Merit Commission, individual members of the Department, focus groups of lieutenants, sergeants and patrol officers, representatives of the Fraternal Order of Police, and members of the community at large.

It appears that a lack of accountability with respect to policy and a lack of consistency in both discipline and promotions, as well as a lack of needed training in various areas, has resulted in a department with a reputation for rough treatment of civilians, a certain level of reduced esteem in the eyes of community residents, and lower than desired morale on the part of the officers themselves, though we were told that the current mayor and police chief’s recent efforts to rebuild the force and provide necessary equipment has had a positive impact.

Even officers, including supervisory officers, tend to decry the lack of discipline in recent years. The former chief’s near-abandonment of discipline is said to have been intended to build morale, which he felt was low when he arrived; but it appears to have injured both the public reputation of the Department and the morale of its officers. Further, the promotion of multiple officers after they had been disciplined in the past has led to a community perception of a lack of appropriate leadership.

Even the members of the Department themselves told us that the lack of discipline and accountability has led newer officers to exceed acceptable boundaries. In addition, a lack of training on new policies, including the focus on sanctity of life in the use-of-force policy, leaves particularly younger officers in the position of focusing almost exclusively on defensive tactics and methods of using less-lethal weapons rather than on how to successfully defuse situations and reduce the need for force.

More than one person, including members of EPD, made reference to the Department’s reputation in the community for being “cowboys”, or “too rough”. This reputation seems to track back to the inconsistent discipline. One ranking officer said that a lack of discipline has led younger officers in recent years to feel that certain conduct, outside the norm, was acceptable; he felt that if they were to see accountability and discipline for policy violations, they would understand the department’s expectations of their conduct.

Training in leadership is also deemed to be lacking. Even high-ranking officers suggested a need for training of new sergeants, who are in their first supervisory role, suddenly promoted to a position in which they must supervise their former peers. It is universally agreed among policing experts that training for sergeants in how to adapt to an accountability/supervisory role is essential (see recommendations on pages 39 and 82).

In addition, more than one member of the Department expressed a concern about the need for improvement in the Field Training Officer program. Two specific concerns were expressed: first, that some field training officers lack the necessary knowledge or experience to train other officers, and second, that some field training officers have a tendency to “undo” the official training received by the

officers. The latter comment reflects a fairly typical issue in field training officer programs in police departments that have not adopted a vigorous field training program.

The promotions process is viewed by many within the Department as “political”, or based more on favoritism than on merit. We also heard comments from officers to the effect that there is a lack of consistency from supervisor to supervisor, and that as a result of these factors, officers feel that “no one knows what the rules are now.” They perceive there to be no clear path toward advancement, e.g., getting to the homicide unit. They tell us that there are no written tests, except for promotion to corporal, though state law requires written tests for all promotions. They tell us that all that is required in order to be considered for promotion in rank is a resumé.

Delays in getting a finding from the internal investigation process also have led to morale problems. As indicated in Section IV of this report, the time limit for completion of an Internal Affairs investigation is currently 30 days, although this is often not adhered to. We have recommended that, based on the data on complaints, even with the addition of personnel to the PSD, the time limit be increased to 90 days – **and be consistently achieved.**

Improvements identified in this report will go a long way toward improving individual officers’ understanding the expectations of their conduct as well as their perceived prospects for promotion and specialized assignment; improving the ability of first-level supervisors to hold line officers accountable; and at the same time improving the community’s perceptions of the Department.

SECTION VIII: OTHER FINDINGS AND RECOMMENDATIONS

Through interviews with EPD personnel, the Krieg DeVault/PERF team identified several additional areas for improvement outside the initial scope of work. These include findings and recommendations regarding department administration and EPD's promotional process.

Department Administration

Based on interviews with EPD personnel, it appeared there was a lack of understanding of the agency's goals and overall sense of direction. EPD staff noted that command staff could benefit from more frequent meetings and guidance on the chief's goals. The chief should establish his vision for the agency and provide clear guidance on expectations and accountability.

Recommendation: *EPD should update its mission/vision statement to establish clear direction for the agency. In updating the mission/vision statement, the chief could consider establishing a committee or working group representing all agency employees and possibly community members to provide input.*

The Krieg DeVault/PERF team can assist the chief in defining and articulating his personal vision for the department and the values he wishes to emphasize to the members of the department as underpinnings for how they should approach accomplishing the department's mission.

Recommendation: *The Chief should establish regular meetings to address crime, administrative matters, and general information sharing. The purpose of these meetings would be to ensure that information is being shared and that agency employees have a voice and opportunity to share their concerns with the chief. This goes toward the concept of procedural justice. A sample meeting schedule is below.*

- Command staff (once per week)
- Supervisors (once per month)
- EPD FOP (once per month)
- Crime meeting (once per month)

EPD Action Taken: *The chief has recently begun having more routine meetings with command staff and supervisors. He has recognized that communication was lacking and has begun to implement some of these recommended meetings. Going forward, EPD should continue to implement monthly meetings with FOP, as well as a monthly meeting to discuss crime issues.*

Promotions

Based on interviews with members of EPD, the Krieg DeVault/PERF team learned that the current promotional process is perceived to be inconsistent, and focused mainly on an officer's resume. The promotion process under the merit commission is described in state statute under I.C. 36-8-3.5-(13-16). This calls for the creation of an eligibility list based on:

- A written exam
- An oral exam
- The performance record of the member; and
- The member's length of service.

Based on interviews, it appears these requirements are currently not being followed.

Recommendation: *EPD should ensure that its promotional process conforms to state statute and local merit commission rules, which require a written and oral exam.*

In addition, the team learned during interviews that EPD sergeants are not currently receiving any training upon promotion to prepare them for their new role. One sergeant shared with the team a comprehensive informal document that his lieutenant had provided him after his promotion. However, the other sergeants the team spoke to had not seen the document or received similar guidance.

Recommendation: *The Chief should create a committee of supervisors, lieutenants and above to develop a policy covering the duties and responsibilities of a sergeant especially in the uniform patrol. PERF was provided a comprehensive informal document shared by one of the sergeants during the sergeant's meeting. The document identified critical job tasks and responsibilities and could be the basis for the committee's work.*

Roll calls are an opportunity for supervisors to ensure that personnel properly report for duty, that information is exchanged from the prior watch concerning current crime conditions, and that proper notifications are made regarding the issuance of new policies, orders, and directives. However, based on the input the team received, it appears that roll calls may not currently be utilized for these opportunities.

Recommendation: *EPD should ensure that supervisors are trained on the value of roll calls and the tasks that should be accomplished during these meetings. The Chief should create a supervisors committee to develop guidance for the conduct of roll calls to ensure procedures including but not limited to:*

- *Personnel properly report for duty*
- *Inspections are conducted (uniform, personal appearance, firearms, cameras etc.) as required*
- *Proper rollcall notifications are made, including the issuance of new policy, orders, directives*
- *Information is exchanged from the prior watch concerning current crime conditions and upcoming events*
- *Appropriate training is conducted*
- *Acknowledge excellent performance*

CONCLUSION

The Krieg DeVault/PERF team was engaged by the City of Elkhart on March 5, 2019 to conduct a review of certain aspects of the operation of the Elkhart Police Department.

Our engagement was focused on only certain areas specifically identified by the City of Elkhart, including: (1) the Department's Use of Force policy and accompanying investigation, documentation and accountability requirements; (2) the history, policy and practices relating to the receipt and processing of complaints against police officers; (3) the disciplinary policies and practices of the Department; (4) the Department's policy on vehicle pursuits; and (5) an assessment of the culture of the Department.

The Elkhart Police Department is peopled with dedicated public servants, from the chief on down through the patrol officers, who are focused on preserving order and protecting law-abiding citizens.

The official mission of the Department is as follows: "The Elkhart Police Department is committed to working in partnership with the community to improve the quality of life and provide a safe environment with Honor, Integrity and Justice." Its official vision is straightforward and aspirational: "Our vision for the City of Elkhart is a crime-free community." Language on the EPD web site indicates that, while EPD knows the achievement of the vision is a "tall order", members of the Department "work tirelessly to improve our relationship with the citizens within the community that we wish to protect and serve."

In many ways, the Department does an excellent job of living up to its mission and striving toward its aspirational vision. Our review, however, identified some areas in which policies can be updated to reflect 21st century best practices in policing; training can be improved such that new policies can be better understood by the officers; accountability throughout the chain of command can be improved in the interest of enforcing adherence to policy and providing counseling as needed to improve officer performance; and greater transparency will improve both community relations and officer morale.

While we are pleased to find that the Department has a vision and mission both of which make reference to working closely with the community, our review suggests that the Department needs to redouble its efforts in this regard. The difficulty of filing a complaint about an officer's conduct, the concerns expressed by representatives of the community with whom we met, and our observations of the likely consequences of some of the current policies and accountability deficits lead us to believe that the Department's relationship with members of various segments of the community could be improved. Improvement of those relationships would go a long way toward increasing respect for the Department throughout the community, and assisting it in solving crimes as members of the community feel more comfortable stepping forward. Chief Chris Snyder has taken a significant step in that direction through his recent announcement that he will form a Chief's Advisory Committee to invite citizen input relating to the operation of the Department.

The chief has, prior to the submission of this report, also undertaken other efforts that will undoubtedly assist the Department in adhering to best practices. For example, he has announced a revision of the vehicle pursuit policy much more aligned with current best practices. The new policy will significantly

decrease the chances of civilians or officers being injured or losing their lives, while still permitting officers to conduct pursuits in truly serious situations that merit the use of such a tactic.

While a revision of the use-of-force policy, and the accompanying training and accountability mechanisms, will take more time, we are encouraged that the chief understands the need for improvements in those policies and the associated accountability mechanisms, and has embarked on a revision thereof.

In addition, morale within the Department would benefit by an understandable and transparent promotion policy aligned with the provisions of state law, as described in Section VII of this report. There appears to be a perception that the current promotion policy is based less on merit than on relationships; and, in any event, it is critical that the policy comport with the requirements of the Indiana Code.

We have appreciated the opportunity to conduct this review of the Elkhart Police Department, and hope that our recommendations will assist an already strong police department in improving both its relationships within the community and its ability to achieve its mission.

Appendix A: Critical Decision-Making Model

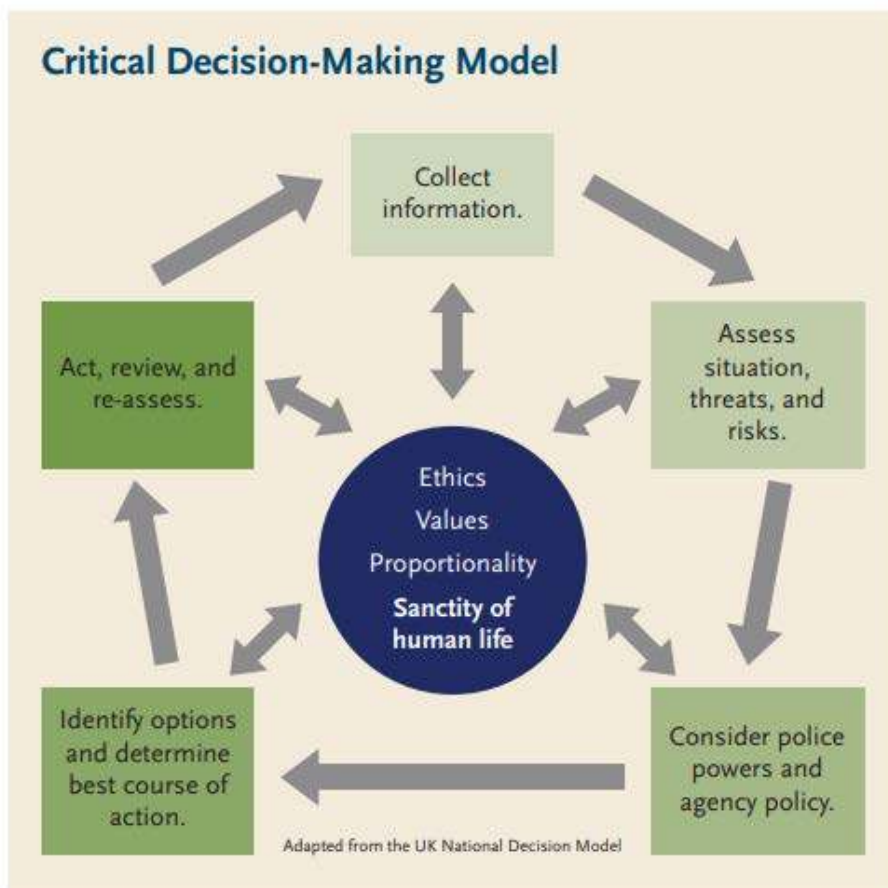
Elements of the CDM

The Critical Decision-Making Model is a five-step critical thinking process. All five steps are built around the core values of the department and the policing profession.

CDM Core

At the center of the CDM is an ethical core that provides grounding and guidance for the entire process. The four elements of the CDM core are:

- Police ethics
- Agency values
- Concept of proportionality
- Sanctity of all human life.



Every step of the process is connected to this core, and the core informs and guides officers throughout the five steps. Everything an officer does within the CDM must support the ideals in the center, and no action can go against those standards.⁴⁸

⁴⁸ <https://perf.memberclicks.net/assets/guidingprinciples1.pdf>

Appendix B: Sample Discipline Matrix – City of Madison Police Department



CITY OF MADISON POLICE DEPARTMENT STANDARD OPERATING PROCEDURE



Professional Standards and Internal Affairs Discipline Matrix

Eff. Date 06/08/2018

Purpose

This procedure outlines the guidelines and expectations for the Madison Police Department's (MPD) response to complaints and the steps involved in the investigation of complaints. Investigatory responsibilities, the Police Bill of Rights and the Seven Steps for Just Cause are also detailed. This procedure begins with a description of the Discipline Matrix. A police discipline matrix aims to achieve consistency in discipline and to eliminate the appearance of disparity. This matrix does not remove discretion; it provides a range of possible sanctions, thus providing clarity.

Procedure

The matrix lists both code of conduct violations and Standard Operating Procedural (SOP) violations. It then provides sanction categories **A** through **E**. The least punitive sanctions are category **A**, with sanctions becoming more severe as the categories progress to category **E**.

In each category, there is a recommended guideline of sanctions. These guidelines are based on comparable sanctions for each violation from Professional Standards & Internal Affairs (PSIA) cases in years past.

This matrix captures most violation sanctions that have occurred in the past 25 years. There are code of conduct/procedural categories that are not covered in this matrix. There is the expectation that all policies and procedures will be followed. MPD understands that as times change, policies and expectations will change, and there will be violations that are not covered on the matrix. These violations shall be added to the matrix as deemed appropriate. For code of conduct violations not specified on the matrix, the sanction will be determined by the Chief of Police.

Sanction Categories

Category A	Category B	Category C	Category D	Category E
<p>Conduct violation in a single incident that has a minimal negative impact on the operations or reputation of the MPD. Sanctions listed in the below categories are not considered discipline. Sanction guidelines may include:</p> <ul style="list-style-type: none"> • Verbal Counseling • Mediation • Documented Counseling <p>A single sanction or a combination of the above listed sanctions may be deemed appropriate. Training and/or Work Rules can also be ordered in conjunction with any sanctions listed above.</p>	<p>Violations that have more than minimal impact on the operations or reputation of the MPD or that negatively impacts relationships with other officers, agencies or the public. This includes repeated acts from Category A within time frames listed below. Sanction guidelines may include thereof:</p> <ul style="list-style-type: none"> • Verbal Counseling • Mediation • Documented Counseling • Letter of Reprimand (First Level of Discipline) <p>A single sanction or a combination of the above listed sanctions may be deemed appropriate. Training and/or Work Rules can also be ordered in conjunction with any sanctions listed above.</p>	<p>Violations that have a pronounced negative impact on the operations or reputation of the MPD or on relationships with employees, other agencies or the public. This includes repeated acts from Category B within time frames listed below. Sanction guidelines may include:</p> <ul style="list-style-type: none"> • Letter of Reprimand • Suspension without pay for one to five days <p>A single sanction or a combination of the above listed sanctions may be deemed appropriate. Training and/or Work Rules can also be ordered in conjunction with any sanctions listed above.</p>	<p>Violations that are contrary to the core values of the MPD or that involve a substantial risk of officer or public safety. This includes repeated acts from Category C within the time frames listed below. Sanctions guidelines may include:</p> <ul style="list-style-type: none"> • Suspension without pay for five to fifteen days <p>Training and/or Work Rules can also be ordered in conjunction with any sanctions listed above.</p>	<p>Violations that are contrary to the core values of the MPD. This includes acts of serious misconduct or acts of criminal conduct. This also involves any conduct that will effectively disqualify an employee from continued employment as a law enforcement officer. Sanction guidelines may include:</p> <ul style="list-style-type: none"> • Suspension without pay for fifteen days or more • Reduction in rank • Separation from service <p>Training and/or Work Rules can also be ordered in conjunction with any sanctions listed above.</p>

Repeated Acts

Repeated acts of category **A** violations within **one year** will increase the repeated violation into category **B**.

Repeated acts of category **B** within **two years** will increase the violation to category **C**.

Repeated acts of category **C** within **three years** will increase the violation to category **D**.

Repeated acts of category **D** within **five years** will result in **separation of service**.

This matrix does not apply to employees with a last chance agreement.

The matrix categories may not be sequentially followed in cases where there may be a number of violations or in cases where there are particularly egregious circumstances. The matrix is considered a guideline only and it is within the Chief of Police's discretion to deviate from the matrix based on the individual case.

Discipline Matrix

Corresponding Code of Conduct Manual Listing <i>Categories skipped have not had recent previous discipline associated.</i>		Category				
		A	B	C	D	E
2.	Truthfulness					
	Failure to be truthful.					X
	Employees shall not make false reports or knowingly enter false information into any record.					X
3.	Performance of Duties					
	Failure to respond to dispatch.		X			
	Failure to properly perform duties assigned.		X			
	Failure to respond to subpoena or scheduled training.	X				
	Failure to comply with SOPs (excludes property handling code of conduct).	X				
	Failure to meet expectations of special initiatives.	X				
	Failure to notify supervisor of custodial arrest.	X				
	Failure to obtain supervisor approval for strip search.			X		
	Failure to assist backup officers.			X		
	Failure to make an effort to check email and mailbox once per shift and respond accordingly.		X			
	Failure to pursue flagrant law violations that they are aware of.		X			
	Engaging in activity on duty that does not pertain to MPD business.		X			
	Employees shall not sleep, idle or loaf while on duty.		X			
	Supervisors shall not knowingly allow employees to violate any law, code of conduct or procedure.			X		
	All employees shall report fit for duty.				X	
	All MPD members shall not be impaired as a result of any drug usage or alcohol. All employees are prohibited from having any measurable amount of alcohol in their system while on-duty. No MPD member shall consume or purchase any intoxicants while in uniform. No MPD member shall consume intoxicants while armed except with the approval of the Chief of Police. It is the responsibility of the employee to consult with their physician to determine their fitness for duty based on their medical condition and/or prescribed treatment.				X	
4.	Absence from Duty					
	Employees shall not be late or absent from duty without prior permission from a supervisor or the Officer in Charge (OIC).		X			

Corresponding Code of Conduct Manual Listing		Category				
Categories skipped have not had recent previous discipline associated.		A	B	C	D	E
5.	Unlawful Conduct					
	Employees shall not engage in conduct that constitutes a violation of criminal law, or ordinance corresponding to a state statute that constitutes a crime.				X	
	Employees convicted of first offense OWI.			X		
	Failure to immediately notify a supervisor whenever investigating an incident involving a law enforcement officer who is a suspect in any criminal activity or OMVWI.			X		
6.	Notification Required of Law Enforcement Contact					
	Failure to notify of contact by any law enforcement agency regarding their involvement as a suspect, witness, victim or contact in criminal conduct, violation of municipal ordinance for which a corresponding state statute exists (ex. OWI or Hit and Run). The employee SHALL report the incident to their commanding officer or the OIC within 24 hours of the contact, or their return to duty, whichever comes first. This must be done in person or via telephone.		X			
7.	Equal Protection					
	Employees shall not show bias based on relationships in investigative decisions, or assist in investigations or enforcement decisions.		X			
	Employees are prohibited from interfering in the normal processing of traffic/parking citations or otherwise disrupting enforcement of the law by other members of the MPD. If a supervisor orders a change in an enforcement decision and a subordinate feels it is wrong, it should be reported to a commanding officer.		X			
9.	Harassment					
	Employees shall not engage in harassment or to retaliate against an employee who reports such harassment. (For definition of harassment, see APM 3-5.)			X		
	Supervisors shall not allow employees under their command to engage in harassment or permit retaliation against an employee who reports such harassment.			X		
	Employees shall not engage in sexual harassment, this includes unwanted sexual advances.			X		
10.	Courtesy, Respect and Professional Conduct					
	Failure to be courteous to the public and to coworkers and shall avoid the use of profane language or gestures. Employees shall also avoid actions that would cause disrespect to the MPD.		X			
	Employees shall not act so as to exhibit disrespect for a supervisor.		X			
	Employees shall not speak derogatorily to others about orders or instructions issued by supervisors.		X			
	Employees shall use police communications systems, email, radio only for official police business and shall exhibit courtesy during the transmission of all messages.		X			
11.	Public Criticism					
	Employees shall not publicly criticize the operations or personnel of the MPD if such criticism undermines the discipline, morale or efficiency of the MPD. This applies both on duty and off duty.		X			
12.	Use of Force					
	9A Employees shall not use deadly force when a lesser degree of force was reasonable.					X
	9B Employees shall not use excessive force when a lesser degree of force was objectively reasonable.				X	
13.	Vehicle Operation					
	Employees shall operate city vehicles with due regard for safety.			X		

Corresponding Code of Conduct Manual Listing		Category				
Categories skipped have not had recent previous discipline associated.		A	B	C	D	E
14.	Insubordination Failure to promptly obey lawful orders from any supervisor. This includes violations of work rules. If these orders conflict with code of conduct or procedure, the ordered member shall call attention to this conflict. Any unlawful orders shall be promptly reported to the Chief of Police.			X		
16.	Criminal Association Failure to avoid regular or continuous associations or dealings with persons known to be engaged in ongoing criminal activity, under indictment, on probation, parole, house arrest or Huber. Association consists of more than a single occurrence.			X		
20.	Cooperation with Investigations Required Failure to cooperate in internal investigations of alleged misconduct, illegal activity or code of conduct violations. This includes failure to answer questions or submit to proper investigative techniques.					X
21.	Access to Police Records Employees shall not access MPD official records for any reason inconsistent with their professional duties.			X		
	Employees shall not release official records of the MPD for reasons inconsistent with their professional duties.			X		
	Employees shall not tamper with any MPD records system.			X		
STANDARD OPERATING PROCEDURES						
SOP	Transportation and Treatment of Prisoners Failure to take all reasonable precautions necessary to secure and safely transport prisoners in accordance with SOP.		X			
SOP	Status Changes Failure to report changes in address or telephone number within 24 hours after making such changes by submitting in writing the changes to the Chief of Police's Office, their commanding officer and the shift OIC. All employees shall maintain a working telephone number. Officers shall promptly notify their commanding officer if their drivers license status changes.	X				
SOP	Search and Seizure Failure to obtain Command Approval for search warrants for any building or dwelling. This does not include search warrants for property or vehicles that are already in MPD custody. Tactical execution of warrants will only be performed by personnel with appropriate training and who are in uniform or otherwise clearly identifiable as police officers.		X			
SOP	Police Weaponry Failure to adhere to the specifics of this procedure as described in the SOP.		X			
SOP	Firearms Safety Employees who have been trained in MPD firearms safety shall strictly adhere to all safety guidelines when handling firearms to prevent unintentional discharges. This applies both on and off duty.			X		
	Unintentional discharge on the range line (no injury or horseplay).		X			
	Failure to ensure the security and safe storage of MPD approved weapons. This applies both on and off duty.		X			

Corresponding Code of Conduct Manual Listing		Category				
Categories skipped have not had recent previous discipline associated.		A	B	C	D	E
SOP	Use and Care of City-Owned Property					
	Failure to adhere to prescribed procedures for check out and use of any MPD owned property. Members of the MPD are responsible for the good care of MPD property and shall promptly report to their supervisor in writing the loss of, damage to or unserviceable condition of such property.		X			
	Unintentional discharge of electronic control device if it occurs in the armory during the check out process and no injuries (documented counseling).	X				
	Failure to drive city owned vehicles with due regard for safety at all times.			X		
	Employees shall not use any MPD property for private purposes unless permission is first obtained from the Chief of Police.		X			
SOP	Property Handling					
	Failure to take all precautions necessary to guarantee proper handling of evidence and any property seized, received or found and shall conform to MPD procedure for handling and disposition; a written record of the property disposition shall be included in the employee's report.		X			
	Destruction of property without following normal tagging procedures.			X		
	Failure to adhere to the specifics listed in detail in this SOP.		X			
SOP	Personal Appearance					
	Failure to adhere to personal appearance code of conduct described in the SOP.	X				
SOP	Identification of Employees					
	Failure to identify with name, rank and employee number when requested to do so. Plain clothes officers will ID themselves with badge and ID card.		X			
SOP	Reporting					
	Failure to write accurate and complete reports and reports shall be completed promptly.		X			
	Failure to complete reports in all arrests, use of force, stops, frisks, criminal investigations, property/evidence handling and other cases outlined in SOPs.		X			
SOP	TIME System Access					
	TIME system access will be in strict compliance with their procedures and information gleaned shall be disseminated in accordance with the SOP.		X			
SOP	Stop and Frisk					
	Failure to adhere to the specifics listed in this SOP.	X				
SOP	Searches					
	Failure to adhere to the specifics listed in this SOP.		X			
SOP	Handling of Evidence, Contraband, Found or Lost Property					
	Failure to adhere to the specifics listed in this SOP.	X				
SOP	Use of Mobile Data Computers					
	Failure to adhere to the specifics listed in this SOP.		X			
SOP	Off-Duty Officer Responsibilities					
	Failure to adhere to the specifics found in the SOP.		X			
SOP	Traffic/Parking Enforcement and Crash Investigation					
	Failure to promptly report to an on-duty supervisor any accident with damage to any city owned motor vehicle operated by them or in their charge. An employee shall request a field supervisor be dispatched to supervise any accident investigation.		X			
SOP	Outside Employment					
	Failure to adhere to the specifics as described in the SOP.	X				
SOP	In-Car Video System					
	Failure to log into squad video system		X			
	Failure to sync in-car video microphone		X			
	Failure to wear microphone		X			

Corresponding Code of Conduct Manual Listing <i>Categories skipped have not had recent previous discipline associated.</i>		Category				
		A	B	C	D	E
SOP	Social Media – Off Duty Failure of personnel to appropriately represent MPD honestly, respectfully, and/or legally while on- or off-duty through the use of social media. Personnel are expected to represent the Core Values of the MPD at all times even when using the internet for personal purposes.		X			
SOP	Emergency Vehicle Operation					
	Unauthorized Pursuit		X			
	Improper Use of Warning Devices and Other Safety Equipment		X			
	Failure to Operate With Due Regard			X		
	Improper or unsafe routine vehicle operation/maneuver.		X			
SOP	Police Vehicle Parking					
	Failure to adhere to the specifics listed in this SOP		X			
SOP	Domestic Abuse					
	Failure to Complete a Required Report Where No Arrest		X			

See Code of Conduct manual and SOPs for detailed description of code of conduct/procedures. The above-described policies/procedures are general summaries and are not meant to be all inclusive.

Not all policies are listed in the matrix, however, all code of conduct/procedural violations will be enforced

Sanction Options in Internal Investigations

These levels are not considered formal discipline:

1. Verbal Counseling.
2. Training
3. Mediation - in minor complaints, if both parties are MPD employees and mutually agree, mediation will be arranged through Employee Assistance Program (EAP) using a professional mediator.
4. Work Rules.
5. Documented Counseling

The levels covered below are considered formal discipline and are placed in the employee's personnel file:

1. Letter of Reprimand
2. Suspension without Pay
3. Reduction in Rank
4. Separation of Service

Restorative Performance Initiative

MFD employees who have received a Letter of Reprimand (considered discipline) may be eligible for Restorative Performance if they have not received documented sanctions in the past. This is based on the Chief of Police's discretion. By taking part in Restorative Performance, the Letter of Discipline may be reduced to Documented Counseling (not considered discipline).

The following are requirements for successful completion of the Restorative Performance Initiative:

- No prior sustained cases.
- Offered at the Letter of Reprimand level of discipline.
- Officer will attend training in a field related to what Code of Conduct, Standard Operating Procedure, or City APM was violated.
- Officer will provide a written summary of the training attended and demonstrate knowledge learned.
- No additional Code of Conduct, Standard Operating Procedure, or City APM violations that result in discipline within one year from date of agreement.

An employee who is participating in the Restorative Performance Initiative will have the PSIA case held in "open" status for one year. If the above listed requirements are met after one year, the Letter of Reprimand is amended to Documented Counseling and the case status will be removed from the employee's personnel file.

If the employee is unsuccessful in completing the program, the discipline will be maintained as a "Letter of Reprimand."

Multiple Violations

In cases where there may be multiple code of conduct/procedural violations involved with a single investigation, each violation may receive a separate and distinct sanction.

Police and Fire Commission (PFC)

The PFC is established by Wis. Stats. Sec. 62.13. The PFC appoints all commissioned officers and establishes hiring guidelines. Charges may be filed against an officer by the Chief of Police, member of the PFC or by any aggrieved party. These charges may request that an officer be reduced in rank, suspended or removed. Under the statute, the PFC shall hold a hearing on the charges and evidence shall be presented. After the presentation of evidence, the PFC must determine that the seven just causes (outlined in Wis. Stats. Sec. 62.13(5)(3m)) have been met. If the PFC determines there is just cause to sustain the charges, the PFC may suspend, reduce in rank, suspend and reduce in rank or remove the officer.

Rights of the Chief of Police/Right of Deviation

The Chief of Police reserves the right of suspension, transfer of assignment and extension of probation, counseling, alcohol/drug assessment, psychiatric evaluation, fitness for duty evaluation, or any other training, treatment or evaluation reasonably deemed necessary by the Chief of Police, in certain cases. The Chief of Police also reserves the right to file charges with the PFC as outlined above. The Chief of Police also reserves the right to terminate civilian employees for just cause.

The Chief of Police or designee will approve all discipline.

The Chief of Police reserves the right to hold suspension days in abeyance.

The Chief of Police reserves the right to deviate outside the recommended Matrix guidelines. If a deviation occurs, the factors leading to the deviation shall be addressed in the discipline notice to the employee. Deviation may be based on mitigating or aggravating factors.

The Chief of Police will make the final determination of disposition.

EXAMPLES OF MITIGATING AND AGGRAVATING FACTORS

Mitigating factors include but are not limited to:

- Ordered by supervisor.
- Mistake of facts.
- Necessity.
- Unintentional.

Aggravating Factors include but are not limited to:

- Inappropriate use of force.
- Personal motive.
- Intoxication.
- Conspiracy.

- Criminal conduct.
- Deception.
- Intentional act.

Nothing in this code of conduct shall be construed to limit the management prerogative of the Chief of Police, nor any other supervisory officer, to take corrective action whenever appropriate.

The Chief of Police may file formal charges against an employee, with the appropriate authorities, irrespective of an internal investigation.

Civilian Employees

All employees are expected to adhere to the MPD code of conduct, SOPs, city administrative procedural memoranda (APMs) and the City of Madison Employee Benefits Handbooks. This discipline matrix is not meant to cover civilian employees of the MPD. Discipline matters resulting from a sustained finding involving non-commissioned personnel follow the overall City of Madison Personnel Rules.

In situations where there is a conflict between the MPD Code of Conduct, SOP, APM or the Employee Benefit Handbook the most stringent rule, code, guideline shall apply.

Probationary Police Officers

This matrix SOP may not apply to probationary police officers whose employment status is subject to their probationary performance.

Original SOP: 02/27/2015

(Revised: 02/29/2016, 03/21/2016, 01/06/2017, 06/15/2017, 07/06/2017, 12/06/2017, 06/08/2018)

Appendix C: Sample Discipline Matrix – Austin Police Department

APD Policy Manual 2017 1.0 Issued 7/20/2017

Policy 903

Austin Police Department Policy Manual

Discipline Matrix

903.1 PURPOSE AND SCOPE

The Discipline Matrix is designed as a guide to be used in conjunction with Policy 902 (Administrative Investigations). This matrix is not an all-encompassing document, but should provide some guidance for the vast majority of investigations involving discipline. As a general rule, those violations below that are listed as IS (Indefinite Suspension), Fact Specific, or those that may include discipline greater than a 15-day suspension will be investigated by Internal Affairs.

Discipline Matrix

Violation	Policy Manual Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Required reporting of violations	900-General Conduct and Responsibilities 900.2	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Requirements of duty	900-General Conduct and Responsibilities 900.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Time and attention to duty	900-General Conduct and Responsibilities 900.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Unprofessional or abusive behavior to coworkers	900-General Conduct and Responsibilities 900.5	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Duty to Identify	900-General Conduct and Responsibilities 900.4.4	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper use of city resources not involving personal gain	1000 - Department Technology Use 1000.3.1	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Improper use of city resources involving personal gain	900 - Employee Speech, Expression, and Social Networking §72.4	4-15 Days	Indefinite Suspension	
Confidentiality	900-General Conduct and Responsibilities 900.3.5	4-15 Days	Indefinite Suspension	
Criminal violation while on duty or related to job duties	900-General Conduct and Responsibilities	Indefinite Suspension		
Driving While Intoxicated	900-General Conduct and Responsibilities	Indefinite Suspension		
Other criminal violations	900-General Conduct and Responsibilities	Fact Specific		
Dishonesty (false official statements)	900-General Conduct and Responsibilities 902.4.1	Indefinite Suspension		
Neglect of Duty (misleading statements)	900-General Conduct and Responsibilities 902.4.1	Fact Specific		
Duty to take action	900-General Conduct and Responsibilities 900.4.1	Fact Specific		

Austin Police Department
Policy Manual

APD Policy Manual 2017-18 Issued 7/26/2017

Discipline Matrix

Discipline Matrix, Cont.

Violation	Policy Manual Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Dereliction of Duty	900-General Conduct and Responsibilities	4-15 days to Demotion	Demotion to Indefinite Suspension	
Neglect of duty	900-General Conduct and Responsibilities 900.4.1	Fact Specific		
Association with those of ill repute	900-General Conduct and Responsibilities 900.3.3	Fact Specific		
Failure to properly investigate a complaint and/or forward an external complaint contact form to Internal Affairs	902.2.5- Administrative Investigations	15 days up to Indefinite Suspension	Indefinite Suspension	
Courtesy (rudeness complaints)	301-Responsibility to Community 301.2	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Impartial attitude	301-Responsibility to Community 301.2	Fact Specific		
Insubordination	110-Organizational Structure and Responsibility 110.4.4	4-15 Days	Indefinite Suspension	
Refusing to cooperate with Internal Affairs	902-Administrative Investigations 902.5	Indefinite Suspension		
Quid pro quo sexual harassment	914-Discrimination and Harassment 914.3.2	Indefinite Suspension		
Failure of Random drug test or test resulting from reasonable suspicion	916-Drug and Alcohol Free Workplace 916.2.3	Indefinite Suspension		
Missed court appearance	935 Court Appearances	Oral Counseling (documented in Field Notes)	Conduct Counseling Memorandum	Written Reprimand to 1-3 Days
Secondary employment violations	949-Secondary Employment 949	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Abuse of sick leave	955-Attendance and Leave Policy 955.7	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Failure to properly investigate	401-Preliminary Field Investigations, 403-Follow-Up Investigations	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper handling of evidence (not related to criminal conduct)	701-Property and Evidence	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
Improper destruction of evidence	701-Property and Evidence 701.2	Written Reprimand to 4-15 Days	Increased one level	Increased one level

Austin Police Department
Policy Manual

APD Policy Manual 2017-1.5 Issued 7/26/2017

Discipline Matrix

Discipline Matrix, Cont.

Violation	Policy Manual Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Biased based profiling/Racial Profiling	325-Biased Based Profiling 329-Racial Profiling	Fact Specific		
Electronic Recording (DMAV, MAV) violation	303 & 304-Mobile Audio Video Recording Operation	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Intentional Electronic Recording (DMAV, MAV) violation	303 & 304-Mobile Audio Video Recording Operation	4-15 Days	Indefinite Suspension	
Intentional Electronic Recording (DMAV, MAV) violation at a criminal incident	303 & 304-Mobile Audio Video Recording Operation	Indefinite Suspension		
Inappropriate electronic messages *	305-Radio and Mobile Data Computer Use 305.2	Written Reprimand	1-3 Days	4-15 Days
Internet/Computer violations	1000 & 1002-Department Technology Use	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Objectively unreasonable use of deadly force	Chapter 2-Response to Resistance	Indefinite Suspension		
Objectively unreasonable use of force	Chapter 2-Response to Resistance	Fact Specific		
Preventable discharge involving serious bodily injury or death	Chapter 2-Response to Resistance	Fact Specific		
Unintentional discharge involving serious bodily injury or death	Chapter 2-Response to Resistance	Fact Specific		
Violations of duty weapons policy	803-Duty Weapons	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Violations of pursuit policy	214-Vehicle Pursuit Policy, 400-Officer Response to Calls, 804-Department Vehicles	Written Reprimand to 1-3 Days	Increased one level	Increased one level
Pursuit policy, Aggravated	214-Vehicle Pursuit Policy, 400-Officer Response to Calls, 804-Department Vehicles	1-15 Days	4-15 Days	4-15 Days to IS
Operation of police vehicle (non-collision)	214-Vehicle Pursuit Policy, 400-Officer Response to Calls, 804-Department Vehicles	Oral Reprimand to 1-3 Days	Increased one level	Increased one level
At Fault collision (not involving serious bodily injury or death)	214-Vehicle Pursuit Policy, 400-Officer Response to Calls, 804-Department Vehicles	Oral Reprimand to 1-3 Days	Increased one level	Increased one level

Austin Police Department
Policy Manual

AFD Policy Manual 2017-1.5 Issued 7/26/2017

Discipline Matrix

Discipline Matrix, Cont.

Violation	Policy Manual Reference	1st Occurrence	2nd Occurrence	3rd Occurrence
Negligent/Reckless conduct resulting in SBI or death	Inclusive, but not limited to: Chapter 2 - Response to Resistance and Pursuit Policies	Indefinite Suspension		
Violation of tactics, other than above "A"	Inclusive, but not limited to: Chapter 2 - Response to Resistance and Pursuit Policies	Fact Specific		

* If inappropriate electronic messages bring discredit to the Department, increase one level.